Moving Beyond Soering: US Prison Conditions as an Argument Against Extradition to the United States

Jeffrey Ian Ross, Ph.D.
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Abstract
Over the past two decades, the European Union, via the European Human Rights Commission, has prevented the extradition of certain individuals to the United States based on a limited number of exceptions. This article suggests that the time is ripe to use the argument that high levels of prison violence and poor medical care, violates Article 3 of the European Convention on Human Rights (hereafter European Convention), and Article 4 of the Charter of Fundamental Rights of the European Union (hereafter FREU). Additionally, the passage of the Prison Litigation Reform Act violates Article 13 of the European Convention and Article 47 of the FREU, and thus signatories to this document are well within their rights to block extradition to the United States. This legal defense however, does not prevent EU members from prosecuting and incarcerating individuals wanted by the United States in their own country once extradition proceedings have concluded.

Keywords
extradition, legal issues, courts/law, Western Europe, comparative crime/justice, corrections

Introduction
In our globalized world, where modern technology enables people to communicate instantaneously and travel from one end of the world to another in under a day, individuals continuously cross borders. Undoubtedly, some of those who cross borders (from the parent who takes their child without their spouses’ approval, to the political opponent, to the international terrorist) have either committed or are suspected of committing crimes. They flee the country in which they are wanted by law enforcement agencies with the hopes that they can remain undetected, build new lives, exploit new criminal opportunities, and/or seek asylum if caught. Many of these individuals manage to slip into foreign countries without those states’ immigration authorities knowing that a warrant exists for their arrest and/or that
they have been convicted of a crime in absentia. In order to hold these people accountable and/or bring these individuals to justice, their respective home countries routinely request their extradition.

Few countries readily and immediately turn over and return these suspects and convicted individuals from whence they came. A complicated system exists that both facilitates and frustrates the extradition of these people and for good reason. Over the past decade, particularly since 9-11, there have been numerous controversial extradition cases (including Khalid El-Masri, Roman Polanski, etc.). Arguments that lawyers and jurists use supporting and blocking the extradition of particular cases depend upon the specific charges levied against that person, the possible penalties that they would be subject to, the country that is requesting extradition, and the correctional institution (whether federal or state) that person is likely to be incarcerated in (Bassiouni, 1987).

Over the past two decades, the European Union via the European Court on Human Rights has prevented the extradition of certain individuals to the United States based on a limited number of exceptions. Although a growing number of extradition cases are arguing that the state of prison conditions in the requesting country violates Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter “European Convention”), and thus try to block extradition, some recent cases for extradition from European countries have been upheld because exceptions to the prison conditions can be found. This article argues that the time is ripe to use the argument that high levels of prison violence, poor medical conditions in the Federal Bureau of Prisons (FBOP) and state prisons, and the American Prison Litigation Reform Act (PLRA) violates Article 3 of the European Convention and thus signatories to this document are well within their rights to block extradition to the United States.

In order to accomplish this task the balance of the article explains the differences between the U.S. Constitutional guarantees and other relevant international legal documents to which the United States is a signatory; outlines the relevant European legal precedents, prison conditions in Europe, the cruel and inhumane prison conditions in the FBOP and state prisons, the Prison Litigation Reform Act, and provides some concluding thoughts.

**Differences Between the U.S. Constitutional Guarantees and Other Relevant International Legal Documents to Which the United States is a Signatory**

It is useful to examine and to compare the language of the United Nations Charter, the International Covenant on Civil and Political Rights, the Convention Against Torture, and the American Declaration of the Rights and Duties of Man, all to which the United States is a signatory, as it concerns the treatment of prisoners with the Eighth Amendment of the United States Constitution.

Article 55 of the U.N. Charter, by promoting “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion, makes clear a general standard of rights applicable to all individuals” (Vasiliades, 2005, p. 80). Article 7 of the International Covenant on Civil and Political Rights (ICCPR), 1996 prohibits “cruel, inhuman, or degrading treatment or punishment.” In particular, Article 10 states that “[a]ll persons deprived of their liberties shall be treated with humanity and with respect for the inherent dignity of the human person.” Although the United States ratified the ICCPR in 1992, the United States included a reservation claiming that Article 7 only restricts U.S. actions in as much as the “cruel, inhuman or degrading treatment” is prohibited by the Fifth, Eighth, and Fourteenth Amendment to the US Constitution (Stone, 2001). The United States, as a member of the Organization of American States (“OAS”), has also agreed to specific prisoner rights in a more regional context. The American Declaration of the Rights and Duties of Man (“American Declaration”), established
Shortly before the Universal Declaration, provided two articles dealing specifically with prisoner rights. Article XXV of the American Declaration vowed that “every individual who has been deprived of his liberty . . . has the right to humane treatment during the time he is in custody.” . . . Article XXVI further determined that every prisoner has the right “to be free from cruel, infamous, or unusual punishment” (Vasiliades, 2005, p. 82). In 1969 “the American Convention on Human Rights (‘The American Convention’), the OAS identified what might be considered outside the realm of acceptable government conduct” (Vasiliades, 2005, p. 82).

Additionally, Eighth Amendment to the US Constitution is intended to protect individuals against “cruel and unusual punishment,” whereas the above legal documents emphasize “cruel, inhuman or degrading punishment.” Moreover, “the Eighth Amendment does not mention prohibitions against treatment as well as punishment, while all the aforementioned treaties recognize cruel, inhuman, or degrading treatment as well as punishment” (Vasiliades, 2005, pp. 85–86). Vasiliades adds, “Because the Eighth Amendment does not specifically include treatment with punishment as a constitutional protection, the standard for determining what is egregious enough to be punishment and what may be considered merely ‘prison conditions’ or unprotected treatment, leaves an obvious gap in protection standards” (2005, p. 86). Thus, it would be fair to claim that the most important American legal documents have a very limited conception of poor prison conditions.

**Relevant European Legal Precedents**

One of the most pressing extradition battlegrounds is currently underway among the European Union countries. A handful of precedent setting cases allow members (i.e., countries) of the European Union, through an appeal to the European Commission on Human Rights (ECHC), adjudicated by the European Convention from extraditing individuals to the requesting country. In general, extradition is not allowed based on the political offence exception and on the possibility that the individual may be subjected to the death penalty (Sheleff, 1993).

The European Union, in particular, is recognized as having a progressive approach to human rights especially those affecting prisoners (Vasiliades, 2005). These are embedded in the Charter of Fundamental Rights of the European Union (“FREU”), as well as upon the previously mentioned European Convention. The FREU is derived from “the European Convention, which governs individual member states as well as European state signatories not a party to the European Union” (Vasiliades, 2005, p. 92). Article 3 of the Convention states, “no one shall be subjected to torture or inhuman or degrading treatment or punishment.” Embedded in Article 3 is the principle of refoulement, which means that those who live in a signatory state have the right not to be expelled to a country where there is a possibility that they will either be tortured or suffer ill treatment.

If the crime that the person is accused or suspected of committing is not a political offense, or if it is not a crime that the defendant would face the death penalty, what other legal remedies are available to the defendant to block extradition? One approach gaining popularity is fighting extradition based on the prison conditions of the host-requesting country. Only recently have prison conditions in American correctional facilities been accepted as a legal defense blocking extradition. The most relevant case is *Soering v. United Kingdom* (*Soering* 161 Eur. Ct. HR (ser. A) at 26-28). In 1985, Jens Soering, a German national who had lived in the United States since he was 11 years old, killed the parents of his girlfriend and then fled to England. The following year, Soering and his girlfriend were arrested on check fraud in England. After a series of appeals to the English courts (1986–1988), in an attempt to block his extradition, in 1988, his lawyers appealed to the European Commission of Human Rights stating that if incarcerated in the United States it would violate Article 3 of the Convention where the “very long period of time spent on death row in . . . extreme conditions with the ever present and mounting anguish awaiting execution” was believed to breach the European Convention. Although the death penalty was the major issue, prison conditions were also an
important part of the legal defense. After the U.K. government got assurances from the state of Virginia that Soering would not face the death penalty, and thus not be placed on death row, they released him back to the United States.

According to Sharfstein (2001–2002), “just about every prison system in the United States is run contrary to European rehabilitative ideals, the strongest claims will be grounded in evidence of specific practices at specific prisons” (p. 1147). The requesting jurisdiction, can argue that the defendant will be housed at correctional facility that does not suffer from these problems, and this opens the door for extradition. Yet this fallback position of the jurisdiction is hard to ensure. The prison conditions in the FBOP and state prison systems, particularly the high levels of violence and poor medical care, are in violation of Article 3 of the European Convention which guards against “inhuman or degrading treatment or punishment.” Moreover, the existence of the Prison Litigation Reform Act (PLRA) grossly violates prisoners rights to due process also enshrined in Article 13 of the European Convention and Article 47 of the FREU.

Prison Conditions in Europe

Although numerous case studies, written by scholars about prisons in Europe, have been published, the most powerful body supervising the state of correctional facilities is the European Council (http://www.coe.int/). Formed in 1949, this organization primarily works toward the integration of European countries into a collective whole. It has four main initiatives that work to monitor correctional facilities and improving prison conditions in the 47 countries that are part of the European Council (i.e., Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Commissioner for Human Rights, Committee on Crime Problems, and Conferences of Directors on Prison Administrators). Their work ranges from prison visits, to providing education, to conducting research, writing periodic reports, and the dissemination of this work.

Many popular and scholarly writers (e.g., Whitman, 2005) have consistently pointed out the decidedly punitive nature of the American correctional system. Snacken (2010), for example, presented information and argued how in contrast to the United States, the European Court of Human Rights has protected European prisoners from numerous American correctional–custodial practices such as the death penalty, overcrowding, strip searches, solitary confinement, and other prisoner rights. She elaborates on just how different European countries are in terms of rates of incarceration, prisoner rights, and rehabilitation. In short, the European countries have lower rates of incarceration, have enshrined and protected prisoner rights, and see rehabilitation as a central goal of incarceration.

Prison Conditions in the FBOP and State Prisons

Introduction

Although copious information (i.e., blogs, personal websites, newspaper articles, documentaries, etc.) exists in different places about American prisons, scholarly/scientific research (i.e., subject to peer review) has the most amount of credibility in a court of law and among the academic community. There are three areas of concern under which a successful claim to the Convention can be made: levels of prison violence (especially proclivity to rape), poor medical care, and the rights of prisoners, which are significantly curtailed because of the Prison Litigation Reform Act.4

Scholarly Literature That Documents the Level of Violence

Although copious anecdotal research exists about the level of violence (i.e., inmate vs. inmate, inmate vs. correctional staff, and correctional staff vs. Inmates; Bowker, 1986), and self-inflicted violence at American correctional facilities, no scholarship has been conducted, which specifically
tests the level of violence at different federal correctional facilities. Indeed, over the past 16 years research has been conducted on general level factors (e.g., Wolff, Shi, & Bachman, 2008; Wolff, Shi, Siegel, & Bachman, 2007), and the relationship between individual level factors such as age (Kerbs & Jolley, 2007), education level, ethnicity, gender (Wolff, Shi, Bachman, & Siegel, 2006), mental health status (Basking, Summers, & Steadman, 1991), type of crime individual was convicted of, lifestyle (Woolridge, 1998), race, and so on (Steiner, 2009; Wolff & Shi, 2009; Wolff, Shi, & Siegel, 2009); facility-related variables such as crowding (Gaes, 1994), levels of misconduct in a correctional facility, inmate capacity, design capacity, and other selected components of correctional facilities (e.g., Woolridge & Steiner, 2009); and with violence.

Most research, regardless of the facility, indicates that violence is endemic to American correctional facilities (e.g., Amnesty International, 1998; Fleisher, 1989; Johnson, 2001). Unfortunately, the majority of scholarly research with respect to levels of violence and health care concerns reflects the state of affairs in local (i.e., jails) and state correctional facilities and almost completely ignores the federal system. Anecdotal evidence suggests the reason for this state of affairs is that it much more difficult for researchers to gain access to the federal system. Bottoms (1999), in a well-cited chapter, has suggested that the social organization of prisons (i.e., differences among staff and inmates, degree of crowding, etc.) has an effect on violence behind bars. Bottoms, however, did not suggest that the security level or type of facility had an effect on violence.

Scholarly Literature Dealing With the Role of Gangs in the Fomentation of Violence in FBOP and State Prisons

Some jails, prisons, and other correctional facilities are literally run by gangs (Camp & Camp, 1985; Stastny & Tynrauer, 1982). Even if convicts want to “do their own time” and be left alone, there are strong pressures to join a gang for self and mutual protection. In situations like these, unaffiliated individuals are subject to routine victimization and they may not be able to defend themselves. Gang members may coerce, extort, or steal material possessions or services from convicts. Sometimes, this is done when inmates conduct a cell invasion, by running on mass into the victims’ cell and grabbing anything of value (Hassine, 2004). According to Sheldon, “The guards can be of little help in protecting him, since in many institutions administrators tend to ‘look the other way’ as rival gangs tend to maintain a certain level of social control and order” (2005, p. 361). It is generally understood that because of competition over space, drug markets, and rivalries on the streets, gangs are responsible for the lion’s share of violence in prisons (Camp & Camp, 1985; Ingraham & Welford, 1987; Fleisher & Decker, 2001). Camp and Camp (1985), though dated, indicate that gangs make up only about 3% of the inmate population but are responsible for the 50% of the violence.

Scholarly Literature Dealing With the Role of Rape as a Method Violence and Subjugation in the FBOP and State Prisons

Most people who are sent to prison fear being raped (Human Rights Watch, 2001; Lockwood, 1980; Rideau, 1992; Ross & Richards, 2002, Chap. 6). Undoubtedly, there is both consensual and coerced sex in prison. These practices are also complicated by male prostitution. However, sexual assault is rarely about physical attraction or gratification; it is about violence, politics, power, and business. Some convicts routinely and habitually exploit others sexually. When in prison, some convicts or groups of cons try to coerce fish (the new arrivals), using fear and/or violence to force them into sexual submission. To surrender will put a fish at the mercy of the violent thugs. If new cons resist, this stance may become a source of challenge for rapists, while victims may risk serious injury (and they might be raped regardless) or even be killed (Ross, 2008). In some correctional
facilities, both correctional officers and administrators have been known to ignore inmates complaints about rape. According to Hensley (2001, p. 58), 46% of correctional officers in a Texas prison suggested that the prisoners were culpable for their rapes. “In some extreme cases, rape can become a ‘management tool’ to punish prisoners who step out of line, break a potentially strong inmate leader, coerce prisoners or crime suspects, create snitches, silence dissidents, and divide inmates” (Leighton & Roy, 2005, p. 822).

Needless to say, statistics on male sexual assault in American prisons are difficult to obtain (Wolff, Shi, Blitz, & Seigel, 2007) and for good reason. Most victims never report being raped because of fear of retribution and/or embarrassment that they let themselves fall prey to this kind of victimization. Nevertheless, since the passage of the Prison Rape Elimination Act (2003), the federal government has started to collect data on the frequency and type of sexual violence behind bars. In the most recent victimization survey (the second of its kind) conducted by the Bureau of Justice Statistics (BJS; part of the U.S. Department of Justice) between January 1 and June 30, 2007 (Beck, Harrison, & Adams, 2007), the report indicated that in 2006 there were 242 allegations of sexual violence with a rate of 2.91 per 1,000 inmates in federal correctional facilities (p. 3). The report, however, does not break out the number of males versus females that were sexually assaulted in federal facilities. Moreover, the writers cautioned readers of the report that

the 2006 survey results should not be used to rank systems or facilities. Given the absence of uniform reporting, caution is necessary for accurate interpretation of the survey results. Higher or lower counts among facilities may reflect variations in definitions, reporting capabilities, and procedures for recording allegations as opposed to differences in the underlying incidence of sexual violence (p. 1).

Since the BJS data should be interpreted with caution, and as simply the tip of the iceberg, other published research estimates on the frequency of male rape include approximately 196,000 men raped in prisons each year (Donaldson, 1995). According to Leighton and Roy, “Other research concludes the number of men raped behind bars is 20% to 30%, with a high number of repeat victimizations (at the extreme involving 50-100 incidents per victim) and a significant number (up to 80%) of incidents involving multiple perpetrators” (2005, p. 819).

Scholarly Literature on the Quality of Medical Care

In general, the level of medical care in the FBOP and state prisons systems is substandard. The scholarly evidence clearly and systematically points to the widely acknowledged perception that the FBOP and Federal Medical Centers (FMCs), where chronically sick or infirm prisoners are housed, engage in symbolic health care (Fleisher & Rison, 1997; Murphy, 2003). Not only is this perception achieved from the scholarly literature, but it is quickly garnered through the numerous legal suits launched by inmates who regularly sue the FBOP and FMCs and through news media reports regarding the poor quality and neglect of care that the FBOP and FMCs provide to inmates (e.g., Hammel, 2009; Killion Valdez, 2008), and selected incidents of corruption (e.g., Walsh, 2010). Although almost all FMCs appear to be accredited by The Joint Commission (a private sector accrediting organization for hospitals and health care organizations in the United States), they are not accredited by the National Commission on Correctional Health Care, an organization that is specifically designed to accredit jails and prison medical services. Moreover, the Joint Commission had been criticized by numerous individuals for the unethical practices connected to the accrediting process (Fisher, 1998; Gaul, 2005).

Maruschak and Beck (2001), researchers with the U.S. Department of Justice, Bureau of Justice Statistics, who analyzed data from the “1997 Survey of Inmates in State and Federal Correctional Facilities,” reported that “21% of State inmates and 22% of Federal inmates said they had a medical
problem (excluding injury) after admission; ... and 10% ... said they had a medical problem that required surgery” (p. 1). Although this information conflates both men and women, the researchers also acknowledge that “a fifth of male inmates reported a medical problem since administration” (p. 1).

More in-depth analysis by Maruschak and Beck included “28% of State inmates and 26% of Federal inmates” reporting injuries since admission to a correctional facility and “20% of State inmates and 23% of Federal inmates said they had been injured in an accident; ... and 10% and 3%, respectively, said they had been injured in a fight” (p. 4). Also important is the following statement, “State and Federal inmates with a physical impairment more commonly than those without a physical impairment reported being injured in an accident since admission. Among inmates with a physical impairment, 22% of those in State prisons and 25% of those in Federal prisons reported being injured in an accident compared to 19% and 22%, respectively, of those without a physical condition” (p. 4).

Finally, the authors note that “The percentage of inmates who reported requiring surgery or a specific medical problem since admission increased with the time served in prison” (p. 7). After 72 months or more “State prisoners were about 5 times as likely to have had a medical problem that required surgery ... than those who has served less than 12 months” (p. 7). “Among Federal inmates who had served 72 or more months at the time of the interview, 18% had required surgery, and 19% had other medical problems, compared to 4% and 14% of those who had served less than 12 months” (p. 7). Although these statistics were reported almost a decade ago, there is reason to believe that these patterns continue to exist if not are worse. Also documented is the increased stress that inmates’ experience that has been documented to increase illness in prison (Rabkin & Struening, 1976; Suls, Gaes, & Philo, 1991).

The poor quality of medical care at most American jails and prisons has been well researched and documented (e.g., Berkman, 1995; Novick & Al-Ibrahim, 1977; National Commission on Correctional Health Care, 1992; Vaughn & Carrol, 1998; Willmott & Olphin, 2005). Sources include not only respected nongovernmental commissions (e.g., Gibbons & Katzenbach, 2006) but also the scholarly literature (e.g., Marquart, Merianos, Hebert, & Carroll, 1997; Murphy, 2003; Wilper, Woolhandler, Boyd et al., 2009a, 2009b). Over the past 15 years, the possibility of individuals sentenced to American correctional facilities and actually dying has increased (Duggar, 1995; Zimmerman, Wald, & Thompson, 2002). Not only has the medical care been open for criticism, but so has the quality of the doctors who work for the correctional facilities (Dabney & Vaughn, 2000). Also, keep in mind that the risk of contracting other physical and life-threatening diseases are exacerbated while behind bars. Copious recent literature exists, which supports this claim (e.g., Delgado & Humm-Delgado, 2008).

Indeed, over the past two decades, because of negative publicity, changing practices in the health care field, and significant court cases (e.g., Estelle v. Gamble, 1976; Farmer v. Brennan, 1994; Rhodes v. Chapman, 1981), conditions in many state systems and federal correctional facilities have improved, relatively speaking, however, they are still poor. For example, the medical services of the California Department of Corrections are under a federal consent decree (e.g., the federal government is now supervising all medical care in these prisons).

Over the past decade, because of prison crowding and overcrowding and declining budgets, the provision of health care in most American prisons has in general deteriorated. One of the most helpful pieces of research bearing on this issue was conducted by Wilper et al. (2009b). Their study included completed interviews from 3,686 federal inmates which, according to the authors was a 84.6% response rate. According to Wilper and his colleagues, “among inmates with a persistent medical problem, 13.9% of federal inmates [and] 20.1% of state inmates ... had received no medical examination since incarceration” (2009b, p. 669). They also found that 20.9% of federal inmates and 24.3% of state prisoners who were required to take “a prescription medication for an
active medical problem routinely requiring medication” stopped taking the medication following incarceration” (2009b, p. 669). According to Wilper et al. (2009a), that after “a serious injury or assault, ... 7.7 of federal, [and] 12.5 ... of state inmates ... did not receive a medical examination” (p. 106). They add “A large number of inmates with serious chronic physical and mental illness fail to receive basic care while incarcerated” (p. 107). Although scholarly research methods have their limitations, particularly when it comes to issues of official deviance and state crime (e.g., Marx, 1988; Ross, 2000a, 2000b; Rothe, 2010), it provides a window into the less sanguine activities of the U.S. prison system.

The PLRA Seriously Curtails Legal Rights for Prisoners

Between the early 1960s until the mid-1990s, there was an increase in lawsuits brought forth against correctional facilities and prison systems. Relying on different amendments to the U.S. Constitution (i.e., First, Fourth, Fifth, Sixth, Eighth, and Fourteenth), prisoners, jail house lawyers, and prison reform organizations have fought for, and judges have passed numerous important legal reforms concerning prison conditions and practices.

It is widely understood that in the United States most prison reforms have been accomplished through prisoner litigation. According to the United States Supreme Court Case McCarthy v. Madigan, 503 U.S. 140, 153, (1992), “Because a prisoner ordinarily is divested of the privilege to vote, the right to file a court action might be said to be his remaining most fundamental political right.”

In 1996, the Prison Litigation Reform Act (PLRA) was passed. Advocates of this legislation believed that inmate litigation was out of control, primarily connected to “frivolous” matters, “thus impairing the quality of justice enjoyed by law-abiding persons” (Human Rights Watch, 2009, p. 9). Unfortunately, the PLRA has had a severe dampening effect on the number and type of inmate litigation permissible in federal courts. “It places limitations on population caps and limits the time periods of injunctions and consent decrees placed on institutions, forces solvent inmates to pay part of the filing fee, and requires judges to screen prison claims to eliminate frivolous law suits” (Bartollas, 2002, p. 220). The legislation made it almost impossible for the courts to initiate any actions against correctional facilities that were perceived to be overly broad. It is conceivable that the number and kinds of suits against the FBOP would be even higher over the past 14 years had the PLRA not been in force.

The PLRA has been criticized by numerous prison activists, correctional workers, prison administrators, and civil/human rights organizations (i.e., American Civil Liberties Union, Human Rights Watch) and is considered draconian in many quarters (e.g., Burns, 1997; Butler, 1999; Fielder, 2000; Hobart, 1999; Lukens, 2006). Opponents point out that the act mitigates inmates’ due process protections and equal protection under the law. “The PLRA subjects lawsuits brought by prisoners in the federal courts to a host of burdens and restrictions that apply to no other persons. As a result of these restrictions, prisoners seeking the protection of the courts against unhealthy or dangerous conditions of confinement or those seeking a remedy for injuries inflicted by prison staff and others, have had their cases thrown out of court” (Human Rights Watch, 2009). In short, the passage of the Prison Litigation Reform Act violates Article 13 of the European Convention and Article 47 of the Charter of Fundamental Rights, and thus signatories to this document are well within their rights to block extradition to the United States.

Conclusion

As the process of globalization increases in our post-9-11 world, where individuals who are charged with terrorism are wanted for criminal matters in the United States, the problem of extradition to the United States and defenses to it continues to be an important issue for some defense
attorneys, U.S. prosecutors, and their European counterparts abroad. Given the social scientific literature reviewed in this article, those sentenced to the FBOP, regardless of the security level, will not escape violence, poor medical conditions, and their ability to fight their conditions using the courts are seriously curtailed. In sum, these conditions and legal restraints violate Articles 3 and 13 of the European Convention and Articles 4 and 47 of the FREU.

Nevertheless, in 2010 a controversial denial to prevent extradition occurred. It involved a Lithuanian man who fled to the United Kingdom and was sought for extradition. In Arvadas Klimas v. Prosecutors Office of Lithuania, the respondent applied to U.K. courts, using a scathing U.S. State Department report, documenting that Lithuanian prisons violated Article 3 of the European Convention. In general, although the court did not dispute the existence of the poor prison conditions in Lithuania, they argued that they were not widespread and were only present at particular correctional facilities. And thus, the motion to prevent the extradition was denied.

The fact that the prison conditions in the United States fall below generally accepted standards may provide the loophole that lawyers and their clients who are seeking to block extradition based on prison conditions may now use. On the positive side, Sharfstein adds, “If the European Court blocked an extradition to the United States because prison conditions there violated the European Convention, the United States could not shrug off such challenges by making assurances about the treatment relators would receive upon extradition” (2002, p. 745). These cases might force the FBOP and the state DOCs to finally do a better job to improve conditions in its facilities as potential cases move through the European Union court system with cases of extradition being denied based on human rights violations. Simply, perhaps the best “control” or “fix” to U.S. prison conditions is using an external criminal justice mechanism founded on securing human rights.

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Notes

1. Although the FBOP is a relatively unitary prison system, prison conditions vary from one state to another. The FBOP tries to maintain consistency in the level of conditions among its facilities (i.e., a medium security prison in Seattle should be the same as a medium security prison in Houston), and only minimal differences can be found. In other words, all maximum security prisons should have the same prison conditions as should all minimum security prisons. It is well established that there are numerous problems with American prisons (Gibbons & Katzenbach, 2006; Ross, 2008; Ross & Richards, 2000).
2. For a more detailed description of the differences between the cruel and unusual clause and international laws see, for example, Heffernan (1995–1996).
3. Although blockage of extradition to the United States has been argued in the case of prison conditions for women (Sharfstein, 2001–2002, pp. 1148–1153) and juveniles (Sharfstein, 2001–2002, pp. 1153–1156), these have not been adjudicated.
4. This argument is by no means unique. According to Sharfstein (2002), “The next logical step [after Soering] . . . is not the per se illegality of the death penalty; rather it is that prison conditions outside of the death row may also violate the European Convention” (p. 723).

References


Cases


Bio

Jeffrey Ian Ross, PhD, is an associate professor in the School of Criminal Justice, College of Public Affairs, and a research fellow of the Center for International and Comparative Law at the University of Baltimore. He has researched, written, and lectured on corrections, policing, political crime (especially, terrorism and state crime), violence (especially, criminal, political, and religious), cybercrime, extreme/abnormal criminal behavior, and crime and justice in Indian Country for over two decades. His work has appeared in many academic journals and books, as well as popular media. He is the author, coauthor, editor, or coeditor of 16 books including most recently *Policing Issues: Challenges and Controversies* (Jones & Bartlett Learning, 2011).