



Written by [Joe Wolverton, II, J.D.](#) on April 18, 2012

Dutch Supreme Court OKs Extradition of Terror Suspect

On Tuesday, the [Supreme Court of the Netherlands upheld the decision](#) of the Rotterdam District Court in 2011 to permit the extradition to the United States of a man suspected of contributing to the planning of a suicide bomb attack on an American military base in Afghanistan in 2010.

The alleged terrorist is Sabir Khan, known in the United States as “Younis the Dutch.” He holds dual Dutch and Pakistani citizenship.

According to court documents, Khan argued that extradition to the United States would be prohibited under [Article 3](#) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (commonly referred to as the European Convention on Human Rights) was enacted in 1950 by the 47 member states of the Council of Europe. Article 3 of the treaty forbids the subjection of an individual to “torture or to inhuman or degrading treatment or punishment.”

Khan has invoked the protections of Article 3 claiming that while in American custody in Pakistan [words missing]. Specifically, Khan’s attorneys averred in pleadings that their client was “tortured, subjected to mock executions and detained in unhygienic and cold prison cells before being put on a plane to the Netherlands.

In its ruling the Supreme Court of the Netherlands “did not find any proof of direct involvement of US officials in this case.” There are no further legal obstacles to extradition,” the judges concluded.

Now that the Supreme Court has ruled against him, the question of whether Khan will be transferred to the United States to be





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tried on the charges against him falls to the Netherlands Ministry of Security and Justice.

In the next few days, Dutch Justice Minister Ivo Opstelten will consider Khan's case — including evidence submitted by the government of the United States and his defense counsel — before making a final determination regarding the accused's extradition.

Last year, the Dutch Foreign Ministry released a statement revealing that the consul for the Netherlands in Pakistan visited Khan twice while he was being held in American custody and he saw no signs of abuse.

A [federal indictment](#) was issued by the U.S. District Court for the Eastern District of New York charging Khan with suspicion of plotting the suicide attack in Afghanistan, possession of guns and “destructive material,” and for colluding with al-Qaeda between 2004 and 2010 in concocting plans to carry out attacks on military bases in Afghanistan.

Curiously, the indictment does not indicate whether the attacks with which Khan is accused were successfully carried out against the American forces in Afghanistan that are the alleged target of the plot. [Various web-based chronicles](#) of military activities in the region indicate that it was a very volatile theatre of action and was unstable and under attack throughout the time frame during which Khan is accused of working with insurgents to harm American units.

Statements submitted to the court indicated that Khan is accused of carrying out the attacks in 2007 after crossing the border from Pakistan into the Afghan province of Kunar.



The case came under the jurisdiction of the Netherlands after “Younis the Dutch” was arrested in Pakistan in April 2011 and deported to the Netherlands.

Upon his arrival at Amsterdam’s Schiphol Airport Khan was arrested and handcuffed. Since his arrival in Holland, Khan has been held at a high-security detention center.

Khan’s lead attorney, Andre Seebregts, insists that his client was “lured to the Netherlands” and was not informed that he would be arrested upon his arrival. Further, his lawyer argues, Khan was not apprised of the material fact that he was under indictment by the government of the United States.

Heedless of these allegations, the Dutch Foreign Ministry stated that they saw no evidence that the government of the Netherlands helped authorities of the United States by falsely convincing Khan that once he left Pakistan he would be free.

“Warning people who are suspected of criminal acts that they may be prosecuted is not part of consular assistance,” the Foreign Ministry said in a statement to the [Associated Press](#).

In his appeal to the Supreme Court, Seebregts seeks to apply a rule handed down by a Canadian court in the case of Abdullah Khadr. In the Khadr case, the courts held that the suspect could not be extradited as the most relevant evidence was obtained from a confession given “under torture while in Pakistan.”

The judges were not persuaded that the Canadian case was similar enough to the case presented them in the matter of Sabir Khan.



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In light of the decision of the Netherlands Supreme Court and the previous statement by the Dutch Foreign Ministry indicating it saw no evidence of torture or deprivation, there is little hope that Sabir Khan will avoid extradition to the United States.

Undaunted, Seebregts vows to fight on. "It is disappointing, but we still hold out hope this man will not be extradited," Seebregts told the Associated Press.

"We will now go to the minister for security and justice and should he agree with the extradition we will file an injunction in The Hague and after that we could go to the European Court of Justice," Seebregts said. "We are not done."

Notwithstanding his attorney's zealous defense of his case, Khan probably should not hang his hopes for relief on a favorable decision in an appeal to the European Courts. In [a recent case](#) of accused terrorists being held overseas, 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, they 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" in an American prison.

The English case involved six alleged



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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.

The Netherlands Supreme Court was likely persuaded by the American lawyers that Khan would be treated fairly and afforded the full panoply of due process protections once he was transferred to the United States. In fairness to the accused, however, such assurances should be taken with a grain of salt given the recent enactment of the National Defense Authorization Act (NDAA). Under applicable provisions of the NDAA, 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.

Khan's attorney may reasonably worry that if his client is extradited he will have much to fear, official American reassurances notwithstanding.

Photo: The Supreme Court of the Netherlands



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