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by [Garrett Zehr](#) | July 6, 2015

An Irish court has blocked a U.S. extradition request because of the conditions of solitary confinement the accused could face if sent to the United States.

Ireland's High Court determined there was a real risk that Irish citizen Ali Charaf Damache would be incarcerated at the U.S. Penitentiary Administrative Maximum (ADX) in Florence, Colorado, and that detention conditions at the prison breach Irish constitutional protections.

The institutionalisation of solitary confinement with its routine isolation from meaningful contact and communication with staff and other inmates, for a prolonged pre-determined period of at least 18 months and continuing almost certainly for many years, amounts to a breach of the constitutional requirement to protect persons from inhuman and degrading treatment and to respect the dignity of the human being, Justice Aileen Donnelly wrote in her [judgment](#) delivered on May 21.

In reaching its conclusions to quash the extradition, the Court cited Irish case law that has established that a prisoner should not be totally or substantially deprived of the society of fellow humans for anything other than relatively brief and clearly defined periods. Indefinite detention in solitary confinement is prohibited under Ireland's Constitution and case law has established that solitary confinement can result in a form of sensory deprivation that is inhumane and abusive of the prisoners' psychological welfare.

It is believed to be one of the first cases where the courts have denied a U.S. extradition request based on prison conditions the individual would likely face if extradited. Previously, refusals of extraditions to the U.S. were limited to cases when the accused could face the death penalty or if the alleged offence was of a political nature.

There have, however, been [calls](#) to expand the legal defenses blocking extradition to more widely consider U.S. prison conditions. In 2012, lawyers for five Muslim men facing extradition from Britain unsuccessfully argued at the European Court of Human Rights in the [case](#) *Babar Ahmad & Others v. The United Kingdom* that the men's probable incarceration at ADX would violate article 3 of the European Convention on Human Rights, which prohibits torture, or inhuman and degrading treatment or punishment.

That decision was [criticized](#) by some legal experts, who argued that US authorities misrepresented the realities of detention at ADX, especially conditions for terrorism suspects. The extradition also resulted in [denunciations](#) of a doubled standard by the British government, which around the same time stepped in to block a U.S. extradition request for British citizen Gary McKinnon, who is white, because of how his Aspergers syndrome would exacerbate the effects of prison conditions in a way that would be incompatible with Mr McKinnon's human rights. One of the accused in *Babar Ahmad*, Talha Ahsan, also has Aspergers syndrome, but the government allowed his extradition to go ahead.

In Damache's case, lawyers for the State argued that the extradition should not be blocked because of the precedent in *Babar Ahmad* that prison conditions at ADX did not violate article 3 of the European Convention on Human Rights. The court ultimately ruled however, that since it found a violation of Irish constitutional protections, it was unnecessary to determine if there was a breach of the European Convention.

Damache was wanted by the United States on two terrorism-related charges relating to conspiracy to provide material support for terrorism and attempted identity theft to facilitate an act of international terrorism. He could have faced up to 45 years in jail in the United States if convicted. Damache had been held without bail for more than two years while the extradition proceedings made their way through the appeals process.

As the basis for the extradition refusal, the court examined conditions at the ADX prison and found that the majority of individuals there are held in de facto solitary confinement. Lawyers for Damache provided evidence from lawyers involved with trials and incarceration of Muslim prisoners charged with terrorism-related crimes in the United States.

[ADX](#) is the only super-maximum-security prison in the U.S. federal system. It has been nicknamed the Alcatraz of the Rockies and described by a former warden as a clean version of hell. It houses infamous inmates such as Unabomber Ted Kaczynski and Oklahoma

City conspirator Terry Nichols but recently has also become a common destination for Muslim men accused of low-level terrorist offences.

The majority of men housed at ADX are confined to their cells between 22 and 24 hours per day. The cells measure 87-square feet and have a solid outer door and a small port that is separated by an inner barred grill. Each cell has a concrete bed and desk, as well as a sink, toilet and shower.

The Court heard that men held at ADX have no direct or face-to-face contact with other inmates and attempts to communicate are through shouting through thick cell walls, doors, toilets and vents. Inmates eat all of their meals alone in their cells. Indoor exercise is done in a solitary cell that is empty except for a pull up bar, while outdoor exercise is usually done in a solitary cage. They are permitted two fifteen minute social phone calls a month the equivalent of six hours per year and some receive few, if any visits, because of the remoteness of the prison.

Contact with staff is extremely limited. Meals are delivered through a slot, and prison staff doing rounds including medical personnel often communicate through the double doors of cells. An expert testified that for most individuals held at ADX, the interaction with prison staff is so minimal that it is virtually meaningless.

The Court's ruling focused on evidence about the effects of solitary confinement on mental health and psychological suffering. Experts testified to the wide range of adverse impacts that have been documented as harms associated with solitary confinement, including depression, hallucinations, heart palpitations and memory loss.

The court considered a 2014 report by the Committee Against Torture evaluating prison conditions in the United States, which called for a ban on the full isolation of inmates in super-max facilities of the type of regime used at ADX. The Court also heard of the 15-day cut-off prohibition on prolonged solitary as [recommended](#) by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Lawyers for Damache submitted an Amnesty International report about mental health concerns of the men incarcerated at ADX, which the Court took note of in its ruling:

Quite disturbingly, they report a lawsuit on behalf of an inmate sent to the ADX who repeatedly self-harmed but after brief periods of referral to the federal medical facility for psychiatric review was returned to the Control Unit at the ADX. He variously lacerated his scrotum with a piece of plastic, bit off his finger, inserted staples into his forehead, cut his wrists and was found unconscious in his cell. After 10 years and 5 months in the Control Unit, he was placed in the General Population Unit in the ADX where he sawed through his Achilles tendon with a piece of metal. He later was placed on anti-psychotic medication following mutilation of his genitals. They also report another inmate who had a history of mental illness since childhood but was transferred to ADX despite a history of self-harming and attempted suicide at another prison. He twice cut his wrists in the Control Unit.

The lack of oversight in the United States for conditions of detention was also noted as a contributing factor for the judgment: The lack of meaningful judicial review creates a risk of arbitrariness in the detention of the person in solitary confinement and therefore confirms that the prolonged detention in solitary confinement amounts to a breach of constitutional rights.

The quashing of the extradition meant that Damache was immediately released, ending his two-year battle fighting extradition and five years spent in custody. In 2013, he had belatedly pled guilty to time served for an unrelated charge of making a telephoned death threat to a Michigan-based Muslim critic of jihadis. Irish police with a U.S. extradition warrant immediately arrested him and he spent the next two years without bail waiting on the extradition ruling.

Born in Algeria, he has lived in Ireland for 15 years and is an Irish citizen. The US has accused him of being part of a 2009 failed conspiracy to kill Swedish artist Lars Vilks, known for his drawing depiction of the prophet Muhammad as a dog. The US claims Damache was a ringleader of the plot who recruited American women using online chatrooms. The US alleges that one of his recruits was Colleen LaRose, currently serving a 10-year sentence for conspiracy to murder and aid terrorists. Another alleged recruit is Jamie Paulin-Ramirez who is serving an 8-year sentence after agreeing to return to the United States from Ireland and plead guilty to providing material support to terrorists.

Upon his release, Damache said in a statement: I am very happy with today's ruling, I always had faith in the Irish legal system and after more than five years in jail I am looking forward to moving on with my life here.

In addition to quashing the extradition, the Court determined that Irish state prosecutors had abdicated their responsibilities in 2011 when they ruled out the possibility of trying the charges against Damache in Ireland. However, the Court did not order state prosecutors to reconsider laying charges in Ireland, and it is expected there is little chance new charges will be filed. The State could still appeal the extradition ruling and it is not yet known if the United States will continue its attempt to pursue Damache.

Garrett Zehr is a Toronto-based legal aid lawyer practicing criminal defense and international human rights law, and a proud union member.

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September 29, 2022

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God bless Ireland's High Court.

feel for Islamist extremists?

No. I despise the United States.

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