

ARNELL, P. 2022. We can't risk justice being denied in schools abuse case: the passage of time affects both victims and the accused person so further delays should be avoided. [Newspaper article]. *The Scotsman* [online], 26 February 2023. Available from: <https://tinyurl.com/5n8wdmwX>

We can't risk justice being denied in schools
abuse case: the passage of time affects both
victims and the accused person so further delays
should be avoided. [Newspaper article]

ARNELL, P.

2022

© The Author 2022.

We can't risk justice being denied in schools abuse case: The passage of time affects both victims and the accused person so further delays should be avoided.

The axiom justice delayed is justice denied rightfully has its supporters. Often attributed to former Prime Minister William E Gladstone, it encompasses the sentiment that where redress to an injured party is too long in coming there is effectively no remedy at all.

The passage of time does not affect victims alone. The right to a fair trial within a reasonable time exists to prevent an accused person from being uncertain about his fate for too long. Time and the due administration of justice are closely related.

News from South Africa that the extradition appeal of the 83-yearold man sought by the Scottish Crown Office for crimes against children committed in Scottish schools in the 1970s may be delayed until February 2023 appears to fly in the face of both these principles. The victims of the alleged acts have to endure a further delay. The accused dying or becoming too infirm to be extradited is a real concern. The chances of him not being tried in Scotland increase as time goes on.

For the accused, the passage of time might become such that his extradition would be oppressive. In the UK that is one of the grounds a requested person can invoke in opposition to his transfer. This is not to suggest that the passage of time for the accused is in any way similar to the victims of his alleged acts. For one thing, the delay since the extradition request is of his own making. It has occurred precisely because he has resisted extradition. Had he consented to being sent to Scotland it is likely he would by now have been tried and convicted or acquitted.

Considering the circumstances of the present case, it is perhaps too easy to conclude that extradition law provides too much protection to accused persons. Or that the judicial systems in requested countries, South Africa in this instance, are deficient on account of the speed of their justice or more generally not being up to the UK's standards of justice. These are not necessarily true.

It is important to note that there two purposes of the law of extradition. These are cooperation in criminal matters and the protection of requested persons. These purposes are often in conflict. It is the role of the courts, or in some cases government ministers, to decide whether the cooperative or protective purpose prevails in a particular case.

Internationally, extradition is governed by a treaty, either bilateral or multilateral. The UK and South Africa are party to the European Convention on Extradition 1957. Domestically there is normally a piece of legislation that governs the process. In the UK this is the Extradition Act 2003 and in South Africa the Extradition Act 1967. Together these provide the framework for decisions, including the presumptions that apply and the grounds of argument which can be put forward. The overriding presumption is that an extradition request will be complied with. Treaties are concluded between like-minded countries where the prosecution of transnational criminality is of agreed importance. The arrangements are reciprocal such that countries are likely to be amenable to a request on the expectation that in converse circumstances the other country would act similarly.

Countries are also wary of becoming safe-havens and attracting criminals who know they will be safe from prosecution within them.

On the other side of the equation, there are grounds that can be invoked in opposition to extradition in UK law and the law of most other countries. In the UK these include time, human rights and ill-health. The time bar provides that an extradition will not proceed if it is unjust or oppressive by reason of the passage of time since the individual has committed the offence.

In South Africa, the law similarly provides that a magistrate may refuse a request if it is not in the interests of justice, or having regard to all the circumstances of the case, it would be unjust, unreasonable or too severe a punishment. In the light of the nature of the allegations against the requested person in the present case consideration of whether he merits protection might seem grotesque. The allegations refer to patterns of sexual and physical abuse in two Edinburgh schools in the 1970s, Edinburgh Academy and Fettes. A number of victims of the alleged abuse have come forward, including presenter Nicky Campbell.

It must be remembered however, that as things stand the individual has not been convicted. The law must operate as designed no matter of the nature of the allegations. This can take time. Within the UK, for example, the proceedings against Julian Assange are continuing. He was arrested in April 2019.

Assange's case can be considered particularly complex and exceptional. Apart from the historic nature of the alleged offending in the present case no exceptional or complex considerations appear to favour the accused person. Whilst he is 83, there have not been reports of ill-health. Indeed, it can be argued that his age favours the urgency of the extradition and subsequent Scottish criminal trial.

The further delay in the case against the alleged paedophile in the South African courts undoubtedly causes anguish and despair in those affected by his alleged actions and their families. Justice itself calls for the trial of those reasonably suspected of such inimical acts.

Whilst extradition can seem a barrier to justice, one should be cautious in being too critical of it. In converse circumstances UK procedure not-uncommonly operates similarly.

At the end of the day, however, almost all requests to the UK are acceded to. There is little doubt that many in Scotland and further afield are desperate for such a result in South Africa.

Dr Paul Arnell is a reader in law at Robert Gordon University