



RESEARCH ARTICLE

A Scoping Review of the Right to a Fair Trial in Extradition

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ABSTRACT

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The right to a fair trial is an essential human right, yet its application within extradition contexts remains a topic of considerable discussion. This scoping review examines recent literature on fair trial rights in extradition, aiming to identify patterns, key themes, and areas for further research. Focusing on studies published since 2018, eligible articles were peer-reviewed journal publications in English, sourced from Scopus, Web of Science, ProQuest, and Google Scholar. Using Arksey and O'Malley's five-stage framework for scoping reviews, an initial search yielded 8,833 publications, of which twenty-six were reviewed in full, and seventeen were ultimately included. The findings reveal a predominant focus on European contexts, underscoring a gap in research from other regions such as Asia, Africa, and Latin America. Six main themes emerged: human rights in extradition obligations; legal standards and judicial safeguards; mutual trust and fair trial standards in the European Arrest Warrant mechanism; diplomatic assurances and human rights concern; sui generis nature of extradition hearings; and extradition and trial in absentia. Each theme reflects developments and limitations in existing extradition frameworks, particularly in balancing international cooperation with fair trial protections. This review concludes by recommending that future research should incorporate perspectives from underrepresented regions, include non-English sources, and expand the range of databases, search engines, and literature types reviewed to provide a more comprehensive understanding of fair trial rights in extradition. Such an inclusive approach could strengthen the foundation for further research and potential reforms.

INTRODUCTION

The right to a fair trial is universally recognised as an essential human right, enshrined in various international human rights instruments (Weissbrodt, 2001; Stoykova, 2023). It provides a critical protection against arbitrary detention and wrongful conviction (Bajri, 2014). As Clooney and Webb (2020) emphasise, "the right to a fair trial is at the heart of human rights protection because without this one right, all others are at risk".

The Universal Declaration of Human Rights (UDHR) includes provisions regarding the right to a fair trial. Article 10 stipulates that everyone is entitled to a fair and public hearing before an independent and impartial tribunal when facing a criminal charge. Moreover, Article 11 states that anyone accused of a crime is presumed innocent until proven guilty according to the law and has the right to defend themselves (United Nations, 1948). Similarly, the International Covenant on Civil and Political Rights (ICCPR), in Article 14, underscores these principles along with the principle of equality before the courts (United Nations, 1966).

The role of international human rights instruments in establishing fair trial protections has laid the groundwork for regional agreements, such as the European Convention on Human Rights (ECHR) (Council of Europe, 1950). The right to a fair trial is embedded in Article 6 of the ECHR. The importance of this right is reflected in the frequent invocation of Article 6 by courts across Europe, particularly in safeguarding accused persons from unjust actions by the States (Loucaides, 2003). In addition to the ECHR, fair trial rights are also enshrined in other regional human rights instruments, such as Article 8 of the American Convention on Human Rights (Organization of American States, 1969), Article 7 of the African Charter on Human and Peoples' Rights (African Union, 1981), Article 20 of the ASEAN Human Rights Declaration (Association of Southeast Asian Nations, 2012), and Article 22 of the Cairo Declaration of the Organization of Islamic Cooperation on Human Rights (Organisation of Islamic Cooperation, 2020).

Meanwhile, extradition, as a mechanism for surrendering individuals between countries for prosecution or punishment, often involves complex legal and human rights issues. According to Efrat and Newman (2020), although it serves as a tool to combat transnational crime, extradition raises important concerns regarding the right to a fair trial. This concern is particularly pressing when the legal systems of the requesting and requested countries differ significantly in terms of procedural safeguards and human rights protection. Moreover, the risk of extraditing individuals to jurisdictions where they may face an unfair trial, torture, or inhumane treatment has been highlighted in many court cases, including the landmark case of *Soering v. United Kingdom* (1989). In this case, the European Court of Human Rights (ECtHR) set a precedent by ruling that extradition should be denied if there is a real risk of inhuman treatment in the requesting country. The ECtHR identified the “death row phenomenon” in the United States, characterized by prolonged delays and extreme psychological suffering, as constituting inhuman and degrading treatment and a violation of Article 3 of the ECHR. However, concerning the right to a fair trial under Article 6 of the ECHR, the ECtHR dismissed Soering’s claim, ruling that the absence of legal aid in Virginia’s Federal Courts was not a sufficient bar to his extradition. While the ECtHR does not rule out the possibility that, in exceptional circumstances, extradition could raise an Article 6 issue if there is a clear risk of a flagrant denial of a fair trial in the requesting country, the ECtHR concluded that no such risk was evident in the present case. This decision underscores the need for countries to consider human rights implications in extradition cases carefully and highlights the importance of aligning extradition process with international human rights protections.

Fair trial rights in the context of extradition have long been a subject of scholarly discussion, primarily focusing on the balance between international cooperation in criminal justice and the protection of individual rights. Many studies have examined the procedural safeguards required to ensure a fair trial for individuals facing extradition, with some addressing the legal frameworks governing extradition and their alignment with international human rights standards. For example, Van den Wyngaert (1990), Dugard and Van den Wyngaert (1998), Harrington (2006), Langford (2009), Arnell (2013), and Johnston (2013) have analysed the applicability of legal protections under the ECHR and ICCPR to extradition process, emphasising the importance of fair trial guarantees in the extradition cases. Others such as Rebane (1995) have explored specific issues such as the right to an impartial tribunal, while Piragoff and Kran (1992) have examined the role of domestic courts in safeguarding these rights and the challenges posed by differing legal standards across jurisdictions. However, to the best of our knowledge, no scoping or systematic review has yet synthesised the literature specifically focused on this topic. Therefore, this scoping review aims to map the existing literature on fair trial rights in the context of extradition, identifying trends and key themes in studies published since 2018. By exploring contemporary developments in this field, the review seeks to provide a comprehensive global overview of fair trial rights in extradition and highlight areas for future research.

MATERIALS AND METHOD

Scoping reviews are gaining recognition as a valuable starting point for emerging researchers due to their flexible methodologies and less stringent quality assessment requirements compared to systematic reviews (O’Flaherty et al., 2015; Anderson et al., 2020). Scoping reviews focus on presenting a descriptive summary of available evidence sources, without placing emphasis on evaluating their quality (Rodger et al., 2024).

Scoping reviews also allow for a broad exploration of literature which may be especially useful for those unfamiliar with the complexities of systematic reviews (Litherland et al., 2024). In particular, scoping reviews facilitate an understanding of the breadth of research available in developing areas, thus identifying under-researched areas in need of further investigation (Christou et al., 2024).

This scoping review was not registered, and no specific protocol was published. We used the Preferred Reporting Items for Systematic Reviews and Meta-Analyses extension for Scoping Reviews (PRISMA-ScR) checklist, developed by Tricco et al. (2018), where applicable, to guide the preparation of a comprehensive report.

We also used the PCC framework (Population, Concept, and Context), as described by the Joanna Briggs Institute, to define the scope of the study and refine the research questions (Aromataris et al., 2024). The framework captured the global scope of the review (Population) and its emphasis on fair trial rights (Concept) within the context of extradition practices across jurisdictions (Context). This approach ensured a systematic exploration of studies aligned with the review's objectives.

Building on this foundation, the study followed the five-step methodology for scoping reviews introduced by Arksey and O'Malley (2005), as outlined below:

Step 1: Identifying the Research Question

Firstly, we formulated the following research questions to guide this study: (1) What is the current state of the literature on fair trial rights in extradition? (2) What are the main themes emerging from this body of work?

Step 2: Identifying Relevant Studies

We conducted searches across three established and reputable databases, namely, Scopus, Web of Science, and ProQuest (Wisnuwardhana et al., 2019; Singh et al., 2021). Additionally, we performed a comparable search using the search engine Google Scholar, which is frequently regarded as a valuable source for accessing grey literature that encompasses articles not formally published by commercial academic publishers (Haddaway et al., 2015; Cooper et al., 2019). A combination of keywords related to fair trial rights and extradition was used, as shown in Table 1. For the Google Scholar search, we made an *a priori* decision to screen only the first 100 results for each search term to maintain a balance between relevance and resources, following the approach suggested by Stevinson and Lawlor (2004) and Weatherson et al. (2017). This decision was based on the likelihood that additional results beyond the first 100 would yield diminishing returns in terms of relevance. All searches were conducted on 19 September 2024.

Step 3: Selecting Studies

To ensure timeliness and rigour, we adopted the approach outlined by Mak and Thomas (2022), where one reviewer conducted independent reviews of titles, abstracts, and full papers, with another reviewer verifying a subset of the papers. In cases of disagreements, they were resolved through discussion and consensus.

We also established specific criteria for including and excluding studies. We focused on peer-reviewed journal articles, as they generally provide more in-depth analysis and reliability (Sefcik and Topaz, 2014). Accordingly, we excluded other types of literature, such as conference proceedings, books, book chapters, editorials, case reports, and any non-peer-reviewed publications.

Furthermore, to concentrate on recent developments, we included articles published between January 2018 and August 2024. This approach ensures a focus on the most current advancements in the field while considering the stage of study maturity, as discussed by Kraus et al. (2020). The subject areas were also limited to law, international law, social sciences, and arts and humanities to ensure relevance to the core themes of fair trial rights and extradition. Consequently, studies falling outside of these areas, such as medicine, linguistics, psychiatry, clinical psychology, and history, were excluded to maintain a consistent focus on the topic. Additionally, to avoid potential language-related misinterpretation or confusion, we only

considered English-language papers, following the recommendations of Mohamed Shaffril et al. (2021) and Bahsri et al. (2023).

We used the filtering tools in each database and search engine to refine the results according to these criteria, narrowing the selection to the most relevant studies for this review. The specific inclusion and exclusion criteria applied during the selection process are summarised in Table 2 below.

Step 4: Extracting and Charting the Data

With the selected studies in place, the data extraction process in this scoping review focused on systematically charting relevant information from the selected studies, including author details, publication year, location, themes, and key findings. This charting process ensured that all important information was recorded in a structured format using Microsoft Excel. Subsequently, the extracted data were organised and presented in Table 3, providing a visual summary of the studies for easier analysis in the subsequent stages.

Step 5: Collating, Summarising, and Reporting the Results

After data extraction and organisation in Table 3, the final step involved collating, summarising, and reporting the findings. The main themes and findings from the selected articles were analysed to provide a comprehensive overview of fair trial rights in the context of extradition. In line with this approach, Table 3 serves as a foundation for discussing the results and identifying gaps in the literature that may warrant further investigation.

Table 1: Sources and search strings or terms

Source	Search strings or terms
Scopus	TITLE-ABS-KEY (("fair trial" OR "fair hearing") AND ("extradition" OR "surrender" OR "rendition"))
Web of Science	("fair trial" OR "fair hearing") AND ("extradition" OR "surrender" OR "rendition") (All Fields)
ProQuest	("fair trial" OR "fair hearing") AND ("extradition" OR "surrender" OR "rendition")
Google Scholar	("fair trial" OR "fair hearing") AND ("extradition" OR "surrender" OR "rendition") "fair trial" AND "extradition"

Table 2: Summary of inclusion and exclusion criteria

Criteria	Inclusion	Exclusion
Literature	Peer-reviewed journal articles	Conference proceedings, books, book chapters, editorials, news articles and non-peer-reviewed publications
Timeline	January 2018 – August 2024	Studies published before January 2018
Subject area	Law, international law, social sciences, and art and humanities	Other than law, international law, social sciences, and art and humanities
Language	English-language studies	Studies in languages other than English
Study focus	Studies examining fair trial rights in the context of extradition	Studies not focused on fair trial rights in extradition (e.g. political discussions, border control)

Table 3: Summary of the included studies

Author(s)/Year of Publication	Location of Study	Objective	Theme	Key Findings
(Arnell, 2018a)	United Kingdom	To examine the application of fair trial rights under Article 6 of ECHR in the United Kingdom's extradition hearings	Human rights and extradition obligations	Although generally not applicable, the United Kingdom's courts have selectively applied Article 6 of ECHR protections in extradition cases involving its nationals, highlighting a limited extension of fair trial rights.
Efrat and Newman (2020)	United States and Europe	To analyse the impact of human rights on extradition cooperation, focusing on the balance between legal cooperation and human rights commitments		Countries more committed to human rights tend to extradite fewer individuals, showcasing a challenge between meeting legal obligations for cooperation and safeguarding human rights during extradition.
Rohalska et al. (2022)	Ukraine	To assess Ukraine's extradition laws and compliance with the European standards on fair trial rights		Ukraine's laws generally align with European standards, but inconsistencies in domestic regulations affect protections for fair trial rights, exposing individuals to risks during extradition processes.
Silva-Garcia et al. (2018)	Columbia	To examine Columbia's extradition practices and their impact on due process rights	Legal standards and judicial safeguards	Judicial oversight in extradition cases is limited, raising concerns about ensuring fair trial rights and due process in Columbia's extradition framework.

Mujuzi (2022)	South Africa	To examine the role of magistrates in South African extradition, focusing on fair trial rights		South Africa divides extradition requests between associated and non-associated States, with magistrates assessing fair trial concerns for associated States. However, the standard for determining fair trial remains unclear, with recommendation to adopt international standards like Article 14 of the ICCPR.
Rafique (2024)	Pakistan	To examine Pakistan's Extradition Act 1972 and implications on human rights protections including fair trial rights		Pakistan's extradition law lacks safeguards like protections against torture, fair trial guarantees, and the right to appeal, highlighting the need for reforms to meet international human rights standards.
Tarwacki (2024)	Poland	To examine how the lack of judicial review process in pre-trial detention in the requesting country impacts extradition cases in Poland		The absence of judicial review in the requesting country's pre-trial detention process raises concerns about fair trial rights, as it could expose the extradited individuals to prolonged detention without adequate legal safeguards.
Dorociak and Lewandowski (2018)	Poland	To examine the impact of the Celmer's case on the principle of mutual trust within the European Arrest Warrant (EAW) scheme, especially in the	Mutual trust and fair trial standards in the EAW mechanism	A dilemma between upholding the principle of mutual trust and ensuring fair trial rights in the EAW exists, particularly when there are concerns about lack of judicial

		context of human rights concerns		independence in the requesting country.
Martufi and Gigengack (2020)	Netherlands	To examine how the Court of Amsterdam in the Netherlands balances mutual trust and fair trial protections in EAW proceedings		Amsterdam courts critically evaluate judicial independence and detention conditions in issuing countries, showing that mutual trust is not absolute and requires careful case-by-case examination.
Billing (2020)	Europe	To evaluate the limitations of mutual trust in the EAW context		Mutual trust can be suspended in exceptional cases where lack of judicial independence in the country issuing the EAW create a real risk of fair trial violations, emphasising the importance of judicial independence as a cornerstone of mutual trust.
Anagnostaras (2022)	Europe	To clarify the application of the Celmer test and the two-step risk assessment for fair trial guarantees		Judicial authorities executing EAW must assess the issues of lack of judicial independence and individual risks to fair trial rights, highlighting challenges in uniformly applying the Celmer test due to its complexity and burden of proof on individuals contesting extradition.
Tomášek (2023)	Europe	To explore mutual trust and mistrust among European Union (EU) member		While the EAW represents a successful system, maintaining mutual trust requires addressing

		countries in EAW cases		challenges posed by differences in judicial standards and legal deficiencies in some EU member countries, which directly impact fair trial rights in extradition.
High and Geddis (2021)	New Zealand	To examine the reliability of diplomatic assurances in extradition cases involving China due to fair trial and other human rights concerns	Diplomatic assurances and human rights concern	The sufficiency of diplomatic assurances from China is questionable due to lack of judicial independence and records of human rights violations, highlighting risks to fair trial and human rights protections.
Perinpanayagam and Ochoa (2022)	New Zealand	To evaluate the implications of relying on <i>ad hoc</i> diplomatic assurances for extradition to China		The enforceability of diplomatic assurances by China in guaranteeing fair trial standards and protection against torture remains a concern, emphasising the importance of post-extradition monitoring to ensure compliance with such assurances.
Harrison (2022)	New Zealand	To analyse New Zealand's approach to extradition, focusing on whether it aligns with the broad approach that prioritises human rights or the narrow approach that emphasises the efficiency of surrendering individuals, with		The New Zealand Supreme Court adopted a narrow approach to extradition, reflecting its reluctance to critically analyse China's human rights record and its willingness to accept diplomatic assurances as sufficient to mitigate risks of torture and unfair trial.

		specific reference to the Kyung Yup Kim’s case		
Arnell (2018b)	United Kingdom	To examine how the nature of extradition hearings in the United Kingdom shapes the application of fair trial rights	<i>Sui generis</i> nature of extradition hearings	Extradition hearings lack full procedural safeguards of criminal trials, presenting challenges for ensuring fair trial rights in extradition.
Yin (2024)	China	To scrutinize China’s trial <i>in absentia</i> principles from the perspective of EU and United States extradition law requirements	Extradition and trial <i>in absentia</i>	China’s trial <i>in absentia</i> framework lacks essential safeguards, making it inconsistent with fair trial standards and could pose challenges for countries with stricter fair trial protections when considering extradition requests from China.

RESULTS

Study Selection Process

Initially, a total of 8,883 publications were identified using the strategies outlined earlier. However, after applying the inclusion criteria, only thirty-two articles qualified. Subsequently, following the removal of six duplicates, twenty-six articles remained available for full-text review. Upon further scrutiny, nine articles were excluded as they did not sufficiently align with the focus of the study. Consequently, only seventeen articles were included in this study. Figure 1 demonstrates the PRISMA-ScR flow chart outlining the selection process.

Geographical Distribution

The locations of the studies included in this scoping review are highlighted in Figure 2. These studies span eleven countries and regions, with one study each from Colombia (Silva-Garcia et al., 2018), the Netherlands (Martufi and Gigengack, 2020), the United States and Europe (Efrat and Newman, 2020), South Africa (Mujuzi, 2022), Ukraine (Rohalska et al., 2022), China (Yin, 2024), and Pakistan (Rafique, 2024). The review also identified two studies based in Poland (Dorociak and Lewandowski, 2018; Tarwacki, 2024) and two from the United Kingdom (Arnell, 2018a; Arnell, 2018b). Notably, much of the research focused on Europe (Billing, 2020; Anagnostaras, 2022; Tomášek, 2023) and New Zealand (High and Geddis, 2021; Harrison, 2022; Perinpanayagam and Ochoa, 2022), with three studies from each. This geographic spread demonstrates the diversity of jurisdictions within which fair trial rights in extradition are examined and highlights a significant focus within European jurisdictions.

Publication Trends

In terms of publication trends, Figure 3 shows the number of included articles published by year between January 2018 and August 2024. In 2018, four articles were published (Arnell, 2018a; Arnell, 2018b; Dorociak and Lewandowski, 2018; Silva-Garcia et al., 2018), while there were no relevant publications in 2019. In contrast, 2020 saw the publication of three papers (Billing, 2020; Efrat and Newman, 2020; Martufi and Gigengack, 2020), followed by one in 2021 (High and Geddis, 2021). The highest number of relevant articles was published in 2022, with a total of five (Anagnostaras, 2022; Harrison, 2022; Mujuzi, 2022; Perinpanayagam and Ochoa, 2022; Rohalska et al., 2022). In 2023, only one study was published (Tomášek, 2023). By August 2024, three additional studies had been published (Rafique, 2024; Tarwacki, 2024; Yin, 2024). These trends suggest a variable but steady interest in this topic over the past six years except for 2019.

Thematic Findings

A descriptive thematic analysis was applied to identify recurring patterns within the literature. Adopting a deductive approach, key ideas related to fair trial rights and extradition were systematically reviewed and categorised. The process involved repeated readings and refinements to ensure the themes accurately reflected the central discussions in the literature. Through this analysis, six key themes were identified and grouped as follows: (1) human rights and extradition obligations (Arnell, 2018a; Efrat and Newman, 2020; Rohalska et al., 2022); (2) legal standards and judicial safeguards (Silva-Garcia et al., 2018; Mujuzi, 2022; Rafique, 2024; Tarwacki, 2024); (3) mutual trust and fair trial standards in the EAW mechanism (Dorociak and Lewandowski, 2018; Martufi and Gigengack, 2020; Billing, 2020; Anagnostaras, 2022; Tomášek, 2023); (4) diplomatic assurances and human rights concern (High and Geddis, 2021; Harrison, 2022; Perinpanayagam and Ochoa, 2022); (5) *sui generis* nature of extradition hearings (Arnell, 2018b); and (6) extradition and trial *in absentia* (Yin, 2024).

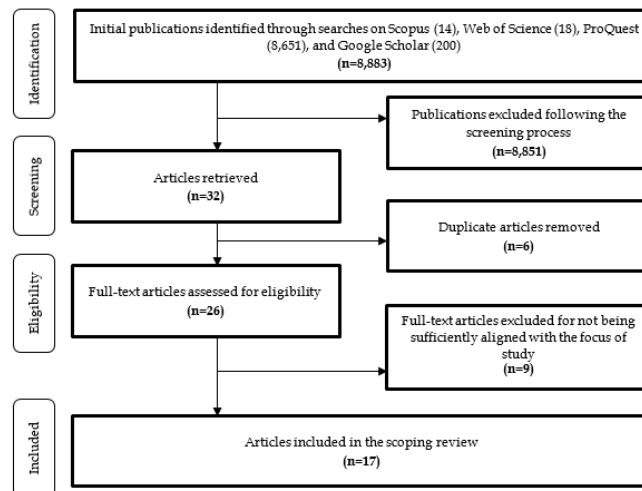


Figure 1: PRISMA-ScR flow diagram

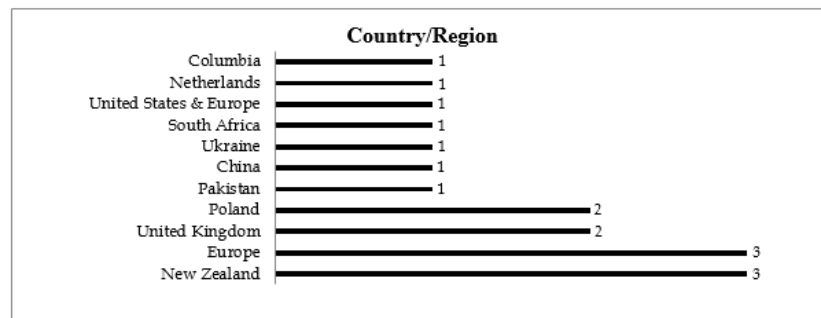


Figure 2: Locations of the studies

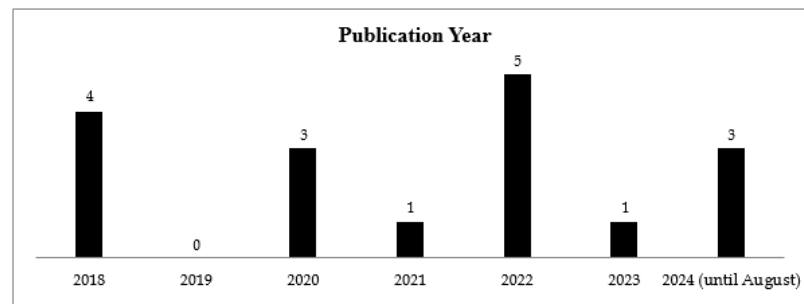


Figure 3: Year of publication of the studies

DISCUSSION

Following the analysis of the research results, this discussion seeks to address the two central research questions. To recap, the first question examines what the current body of literature reveals about the state of fair trial rights in the context of extradition, while the second question identifies the key themes that emerge from this literature. In discussing these questions, this section provides a summary and critical evaluation of how existing studies contribute to our understanding of the right to a fair trial within extradition frameworks, identifying trends, gaps, and areas for future research.

Current State of the Literature on Fair Trial Rights in the Extradition Context

In addressing the first question, this scoping review identifies several key patterns and regional disparities in research focus. The results indicate a substantial concentration of studies on Europe as a region and on specific European countries like the United Kingdom, Poland, Ukraine, and the Netherlands. Together, these regions represent 10 out of 17 studies (including one study that uses both the United States and Europe as reference points), or about 58.8% of the reviewed literature (Arnell, 2018a; Arnell, 2018b; Dorociak and Lewandowski, 2018; Billing, 2020; Efrat and Newman, 2020; Martufi and Gigengack, 2020; Anagnostaras, 2022; Rohalska et al., 2022; Tomášek, 2023; Tarwacki, 2024). In contrast, Oceania, represented solely by New Zealand, accounts for 3 out of 17 studies, or approximately 17.6% (High and Geddis, 2021; Harrison, 2022; Perinpanayagam and Ochoa, 2022). The remaining studies are distributed across Asia, Africa, and Latin America, with Pakistan, China, South Africa, and Colombia each contributing one study, representing approximately 5.9% of the total (Silva-Garcia et al., 2018; Mujuzi, 2022; Rafique, 2024; Yin, 2024).

The strong focus on Europe in these studies likely reflects a greater regional commitment to fair trial rights, strengthened by regional legal frameworks like the ECHR. Additionally, this trend suggests that countries with legal systems known for emphasising human rights protections, such as New Zealand (World Justice Project, 2024), are more active in examining fair trial rights within extradition contexts. Meanwhile, the smaller number of studies from Asia, Africa, and Latin America may indicate that the right to a fair trial in extradition receives comparatively less attention or remains under-researched in these regions.

Moreover, publication trends from 2018 to 2024 reveal a growing interest in fair trial rights within extradition. Research has steadily expanded over this period, suggesting that this topic is gaining continued attention and prominence in international law discussions, with Europe leading in research contributions.

Overall, these findings show notable research gaps that warrant further exploration. Non-European countries are rarely documented in the literature on fair trial rights in extradition, indicating an absence of perspectives from these regions. Addressing these gaps in future research through more geographically diverse studies would help provide a more globally representative overview of fair trial rights in extradition contexts.

Key Themes in the Literature on the Right to a Fair Trial in the Extradition Context

Regarding the second question, the analysis identified six themes concerning fair trial rights within the extradition context, as previously mentioned. These themes emerged through a thematic analysis of the articles included in this scoping review.

The first theme, human rights and extradition obligations, highlights the conflict between fulfilling international legal obligations through extradition and upholding fair trial rights. Extradition is an important tool to combat cross-border crime, yet it often risks compromising fair trial standards as countries weigh extradition requests against potential human rights violations, including the right to a fair trial in the requesting country (Efrat and Newman, 2020). In Europe, Article 6 of the ECHR guarantees fair trial protections, but it does not directly apply to extradition hearings. Consequently, individuals have been extradited despite potential human rights risks in the requesting country. To address this issue, the Supreme Court of the United Kingdom has selectively applied Article 6 protections in extradition cases involving its nationals, allowing for a limited extension of fair trial rights (Arnell, 2018a). In Ukraine, despite efforts to align extradition laws with European standards, inconsistencies in domestic regulations continue to negatively affect the protection of individual rights, including the right to a fair trial, in the extradition process (Rohalska et al., 2022). This discussion highlights the delicate balance between meeting international commitments and protecting human rights, emphasising the need for an approach that respects extradition obligations while ensuring the right to a fair trial is upheld.

The second theme, legal standards and judicial safeguards, underscores the critical role of extradition laws and judicial review mechanisms in ensuring the right to a fair trial. In South Africa, the Extradition Act No. 67 of 1962 divides extradition requests into those from 'associated States,' meaning African countries with reciprocal agreements allowing for an endorsement of arrest warrants mechanism, and those from a 'non-associated State.' For associated States, magistrates assess fair trial concerns in the requesting country, while this responsibility falls to the Minister of Justice for non-associated States. However, the standard for determining fair trial remains vague, with suggestions for assessment to be based on international standards like Article 14 of the ICCPR rather than domestic standards (Mujuzi, 2022). In Pakistan, by contrast, the Extradition Act of 1972 lacks critical safeguards for fair trial, protection against torture or inhumane treatment and the right to appeal, underscoring a need for reform to align with international human rights standards (Rafique, 2024).

Meanwhile, judicial safeguards are necessary to prevent arbitrary detention and ensure fair treatment in the requesting country. In Poland, it is argued that the absence of judicial review of pre-trial detention upon extradition may jeopardise fair trial standards, exposing extradited individuals to prolonged detention without adequate legal recourse (Tarwacki, 2024). Nevertheless, limited judicial oversight in Colombia's extradition cases has compromised extradited individuals' due process and fair trial rights (Silva-Garcia et al., 2018). These differences underscore the challenge of ensuring consistent fair trial protections across different jurisdictions.

The third theme, mutual trust and fair trial standards in the EAW mechanism, addresses the challenge of balancing mutual trust with the need to protect fair trial rights. The EAW is a legal mechanism within the EU that simplifies and expedites extraditions among member countries, operating under the principle of mutual trust. This principle assumes that all EU member countries uphold equal human rights and legal standards, allowing EU countries to recognise and enforce each other's judicial decisions with minimal scrutiny, creating a streamlined and cooperative legal process for handling cross-border crime (Tomášek, 2023).

However, certain cases raise the question of whether this approach adequately protects fair trial rights. Landmark cases such as *Aranyosi and Căldăraru* (2016), and *LM* (also known as *Celmer*) (2018), established that the principle of mutual trust is not absolute. These rulings allow the suspension of the EAW if there is clear evidence that extradition would expose the requested individuals to risks of inhuman or degrading treatment or violate their right to a fair trial, in the absence of adequate guarantees (Martufi and Gigengack,

2020; Billing, 2020). Nonetheless, it has been suggested that the conditions for suspending the EAW should be applied restrictively to maintain the efficiency of cross-border cooperation (Dorociak and Lewandowski, 2018). Meanwhile, courts, such as in Amsterdam, have taken a cautious approach following the principles in *Aranyosi* and *Căldăraru*, and *LM* cases, by examining additional evidence about the detention conditions and judicial independence in the requesting country that may affect the right to a fair trial of the individual requested for extradition. If this examination finds a concrete risk to the individual's fair trial rights, extradition may be postponed or even refused if the risk persists. This underscores the need for careful consideration rather than simply assuming that the requesting country automatically complies with human rights (Martufi and Gigengack, 2020).

Subsequently, the *Openbaar Ministerie* (2022) case reaffirmed the *LM* decision, clarifying that judicial appointments by bodies lacking independence could undermine fair trial guarantees. However, this does not automatically prevent extradition simply if the bodies' composition primarily reflects legislative or executive selection. Additionally, the burden is on the individuals contesting extradition to demonstrate that flaws in the requesting country's judicial system directly impact their case or are likely to upon extradition. This requirement, however, may complicate fair and consistent application by national authorities (Anagnostaras, 2022). This indicates that the imbalance between mutual trust and fair trial rights within the EAW requires more than mutual trust alone; it calls for careful risk assessments in each case to prevent potential human rights violations.

The fourth theme, diplomatic assurances and human rights concern, highlights how these assurances are used in extradition cases to mitigate human rights risks by ensuring that the requesting country guarantees the right to a fair trial and protection from torture. Nevertheless, diplomatic assurances from countries with poor human rights records, such as China, frequently raise concerns. This issue was central in the New Zealand's case of *Minister of Justice v. Kyung Yup Kim* (2021), where critical questions arose regarding whether the assurances from the Chinese authorities could adequately protect the fair trial rights of individuals extradited from New Zealand. China's judicial system, often criticized for lacking independence and upholding poor human rights practices, poses a substantial risk that these assurances may not be respected. Despite these concerns, the New Zealand Supreme Court adopted a narrow approach, ruling that a broad assessment of China's human rights record was unnecessary. Instead, the Minister of Justice could rely on specific assurances from China against torture and for a fair trial, which the court deemed sufficient to minimize risk. This decision prioritizes effective extradition by viewing that specific assurances are adequate for safeguarding rights, even without a comprehensive review of the requesting country's human rights practices (High and Geddis, 2021; Harrison, 2022).

The New Zealand Supreme Court's narrow approach, favouring these assurances over a broad assessment of China's overall human rights practices, may set a global precedent. However, it also reveals the inherent risks of depending on diplomatic assurances alone from countries with documented human rights issues, suggesting the need for a robust post-extradition monitoring to ensure compliance and protect the extradited individual's rights effectively (Perinpanayagam and Ochoa, 2022).

The fifth theme, *sui generis* nature of extradition hearings, emphasises the unique procedural challenges of applying fair trial standards in extradition hearings. Unlike other criminal proceedings, these hearings are classified as *sui generis* or unique as they have a combination of civil and criminal elements without fully adopting the procedural safeguards of either. This quasi-criminal classification may limit fair trial protections, as extradition hearings lack some procedural rights typically guaranteed in criminal trials. Given these complexities, standards specifically adapted to the procedural demands of the extradition hearings are essential to safeguard fair trial rights adequately and consistently within the extradition hearings (Arnell, 2018b).

The sixth theme, extradition and trial *in absentia*, examines the difficulties in ensuring fair trial rights when extradition requests involve cases where the accused was tried without being present in court. Trials conducted *in absentia* may significantly impact fair trial rights if they lack safeguards like the right to be

informed of charges, the ability to mount a defence, and the possibility of retrial upon extradition. This becomes particularly challenging in cases where the requesting country's legal standards differ from international fair trial protections. For example, China's trial *in absentia* framework highlights these concerns, as the rules often do not guarantee retrial rights or adequate legal representation for the absent accused (Yin, 2024). For countries applying stricter fair trial standards, deciding on extradition requests from jurisdictions with different trial *in absentia* standards could create a conflict between meeting international obligations and upholding fair trial principles. In these cases, some countries may require assurances that fair trial rights will be fully respected, such as the provision of a retrial if the accused was not present in the initial proceedings. This theme illustrates the need for clear provisions that address fair trial protections *in absentia* cases to ensure that extradition does not compromise human rights protections.

Together, these themes reveal the complexities and challenges of upholding fair trial rights within extradition frameworks. The varying practices across jurisdictions underscore the lack of uniformity in fair trial protections, highlighting an urgent need for universal safeguards that could consistently protect human rights in extradition cases worldwide. These insights set the stage for examining the limitations of the current study and suggesting recommendations to guide future research.

LIMITATIONS AND RECOMMENDATIONS

This study has a few limitations that might affect the extent to which its findings may be applied. First, the selected databases and search engine used in this review, namely Scopus, Web of Science, ProQuest, and Google Scholar, provided a solid foundation for the review but may not have captured all relevant evidence available on other platforms. Additionally, as shown by the results, most of the available research on fair trial rights in extradition comes from Europe, which means perspectives from other regions like Asia, Africa, and Latin America are underrepresented. Moreover, the time frame of the review, focusing on studies published from 2018 onward, helped capture recent developments but may have excluded earlier, foundational work still relevant to this topic. Another limitation is that we focused only on peer-reviewed journal articles, which, while ensuring high-quality sources, may have overlooked significant findings from other types of literature. Lastly, our study included only English-language articles, which could limit the understanding of fair trial rights in extradition as practiced in non-English-speaking countries.

To address these limitations and enhance the scope of future research, several recommendations can be made. First, broadening the range of databases and search engines could capture a wider coverage of available literature. Expanding the geographic focus to include underrepresented regions like Asia, Africa, and Latin America would also provide a more inclusive perspective on fair trial rights in extradition contexts. Incorporating non-English articles could also offer key perspectives from regions and jurisdictions that might otherwise be overlooked. Future research could further benefit from considering studies published before 2018 to capture the historical development of this research topic. Lastly, including diverse types of literature, beyond peer-reviewed journals, could uncover valuable insights that enrich the understanding of fair trial rights in extradition.

In summary, utilizing additional databases and search engines, along with expanding the geographic scope, time frame, and types of sources, as well as including non-English research, would provide a more comprehensive and globally balanced understanding of fair trial rights in extradition. These efforts would enhance our knowledge of fair trial rights in a way that acknowledges and respects the diversity of legal systems worldwide.

CONCLUSION

This scoping review has provided a thorough overview of recent literature on fair trial rights within the context of extradition, highlighting both progress and areas that require further attention. By examining studies published since 2018, the review identified several key themes that reveal strengths and limitations in how fair trial protections are applied across different jurisdictions. While many studies focus on European contexts, which have contributed valuable insights, this concentration underscores the need for

broader geographical representation to ensure that perspectives from various jurisdictions are fully represented.

The findings emphasise the importance of balancing the goal of cross-border cooperation with the fundamental right to a fair trial, recognising that extradition practices have significant implications for individual rights. As legal systems vary widely, these differences present challenges in ensuring that fair trial standards are uniformly upheld.

Future research should strive for a more globally inclusive approach by incorporating studies from underrepresented regions and integrating non-English sources to better capture varied perspectives on fair trial rights in extradition. Expanding the scope of literature to include sources beyond the selected databases, search engines, and peer-reviewed journals could also provide practical insights that deepen our understanding of fair trial rights in extradition. Such a comprehensive approach will contribute to a more diverse and well-rounded understanding of fair trial standards in extradition across jurisdictions and could serve as a foundation for further studies and potential reform.

AUTHORS' CONTRIBUTION

The first author conceived and designed the study, collected and independently reviewed the titles, abstracts, and full papers, analysed the data, interpreted the results, and wrote the manuscript. The second author verified the selected papers, while both the second and third authors provided valuable feedback, critically revised the manuscript for intellectual content, and supervised the study. All authors reviewed and approved the final manuscript.

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