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Contents

1. Introduction
2. Torture and mistreatment
3. Cover-ups of abuse and impunity for misconduct
4. Prison conditions
5. Overcrowding
6. Detention without trial or charge
7. Fair trials
8. Corruption in the law enforcement authorities and the judiciary
9. The Human Rights clause in S.21 of the Extradition Act – a bogus safeguard
10. No protection against malicious EAWs
11. The case of Andrew Symeou
12. The case of Dr Miguel-Angelo Meizoso
13. The case of Julian Assange
14. The Crete Five
15. The case of Michael Turner and Jason McGoldrick
16. Reforms at the EU level?
17. Recommendations

1. Introduction

For many centuries, the English justice system has recognised that everyone should be presumed innocent until proven guilty and that protecting the rights of the suspect should be as important as the speed and efficiency of punishing crime. Those are the difficult choices we in this country have made, as a matter of principle, on the basis of centuries of experience. The EAW regime is based on the opposite principles. We are being told in all seriousness by some proponents of the EAW that the rights of suspects are worth sacrificing for the efficiency and speed of EAW procedures; that imprisonment and mistreatment of innocent people is, at most, a minor 'imperfection' of a successful system. Under that regime, British courts are obliged to extradite British citizens on the force of a piece of paper, thus exposing them to a risk of a lengthy detention without trial, torture, mistreatment, or unfair trial. In doing so, the courts are not even allowed to look at the *prima facie* evidence first. In practice - while a lip-service is still being paid to the abstract presumption of innocence - this is a presumption of guilt.

This alone is a good enough reason to get rid of the EAW: it is simply incompatible with our fundamental principles of justice. Furthermore, the basic premises whereupon the EAW regime is founded are simply incorrect.

Thus, the automatic judicial surrender under the EAW is based on the assumption that the rights of the suspect would be protected anywhere in the EU just as well as they are protected in the UK. This is demonstrably not the case: the human rights record of most EU members is significantly poorer than our own. There is no shortage of evidence - countless examples may be found in the latest **US State Department annual reports** on those countries' human rights practices and in the latest **reports of the Council of Europe Committee for the Prevention of Torture** following visits to those countries. The findings of those reports are summarised below.

2. Torture and mistreatment

Few EU member-states have had a clean record on ***torture and other cruel, inhuman or degrading treatment or punishment***. Police mistreatment of suspects (mostly beating, with or without truncheons; abusing handcuffs to inflict pain; verbal abuse and threats) has been noted in the 2010 US State Department reports on **Austria, Bulgaria, Cyprus, Estonia, France, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Spain and Sweden**. In many cases, mistreatment allegedly aimed to extort confessions. Similar torture or mistreatment of prisoners by the prison staff was reported from **Belgium, Bulgaria, Hungary, Italy, Latvia, Lithuania, Poland, Portugal, Romania and Spain**.

Table 1. Human rights problems in EU law enforcement systems

Known human rights problems or credible allegations of abuse	Austria	Belgium	Bulgaria	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden
Torture and mistreatment by the police (e.g. to extort confessions)	●		●	●			●		●		●	●		●	●	●				●	●	●	●		●	●
Torture or mistreatment of prisoners		●	●									●		●	●	●				●	●	●			●	●
Harsh/poor prison conditions	●		●	●			●		●		●	●		●	●	●				●	●	●	●		●	
Suspects and convicts held together				●										●	●						●					
Lengthy pre-trial detention			●				●	●			●			●	●	●		●		●	●	●	●		●	●
Right to legal representation violated												●		●	●	●		●			●	●			●	
Corruption within police, law enforcement, & judiciary			●								●	●		●	●	●						●	●	●		

In **Lithuania**, the latest delegation of a Council of Europe Committee for the Prevention of Torture (CPT) revealed 'a number of allegations of recent mistreatment during questioning by police officers, often apparently intended to produce confessions. It noted that juveniles appeared to be particularly at risk. The report described the mistreatment as mainly consisting of "kicks, punches, slaps, and blows with truncheons or other hard objects (such as wooden bats or chair legs)." The delegation also heard allegations of extensive beating and asphyxiation using a plastic bag or gas mask. The delegation indicated that in some cases it was able to provide evidence consistent with the allegations.'

In **Portugal**, the CPT delegation not only noted 'numerous allegations of physical and verbal mistreatment of detainees' but also discovered a 'large number of non-standard objects (baseball bats, a plastic pistol, telescopic batons, and cudgels) it found in rooms used by police for interrogations.' Portugal's own authorities investigated numerous complaints of 'physical abuse, threatening use of firearms, excessive use of force, illegal detention, and abuse of power' by the police and prison guards.

In **Belgium**, 'several inmates from the Ittre Prison claimed to have been beaten by prison guards in the so-called naked cells, while wearing handcuffs (for disciplinary reasons, inmates may be undressed and locked in separate cells).' Note that a 'disciplinary' custody in 'naked cells' is considered to be in order in Belgium; it was only the beating that is reported as mistreatment.

In **Slovakia**, ten police officers are currently on trial for mistreatment of six detained juveniles. *'Videotapes of the incident, leaked to the media in April 2009, showed the officers forcing the boys to strip naked, kiss, and hit each other.'*

A particular form of cruel treatment of detainees is legalised in **Sweden**; namely, lengthy periods of isolation and segregation in various forms, ranging from restrictions on correspondence to solitary confinement. The periods of isolation range from **6 to 18 months**. According to Swedish authorities, about **45 per cent** of all detainees are subject to such isolation or restrictions. Independent sources suggest a higher figure: thus, when the COE Committee for the Prevention of Torture visited the *Gothenburg Remand Prison* in 2009, it found that 62 of the 136 remand prisoners were liable to such restrictions. *'The overwhelming majority of remand prisoners met by the delegation during its visit had been given no explanation of the reasons for the restrictions and that many considered the only reason they were prohibited from contact with their family members was to "break" them.'*

The examples of more trivial forms of mistreatment, such as beating, are countless across the EU. In **Spain** alone, *'the Coordinator for the Prevention of Torture (a group of Spanish human rights nongovernmental organizations (NGOs), universities, and bar associations) reported that in 2009 there were 242 reports of torture or mistreatment involving 624 complainants, up from 520 complainants in 2008. According to the group, 64 of the complaints involved cases against local police authorities; 43 against the national Guardia Civil; 197 against the national police authorities; 190 against the Catalonia local police, the Mossos d'Esquadra; 46 against the Ertzaintza (Basque authorities); and 65 against prison staff. The autonomous regions with the highest number of complaints were Catalonia (215), Basque Country (104), Madrid (103), Andalucía (81), Galicia (47), and Valencia (34). [...] The report indicated that in 2009 a total of 11 persons died while in police custody, 28 died in jail, and two minors died while in detention centres for youth.'*

Overall statistics across the EU are not available, but it is **beyond doubt that there are thousands of instances of torture or mistreatment across the EU each year, many of them resulting in deaths of victims.**

In **Poland**, which is noted for issuing many EAWs, torture is not even formally criminalised in the Penal Code. As long ago as in 2008, Poland's Human Rights Ombudsman *'issued a formal statement of concern to the chief of the national police about the excessive use of force by police, such as beatings that resulted in injuries and unauthorized arrest in some cases. The ombudsman requested information on a plan to address the problem'*. The ombudsman's statement was ignored by the police.

Six police officers and one civilian employee are currently on trial in **Poland** on the allegations of *'beating and subsequently abandoning intoxicated persons in a forest, as well as beating two teenagers at a police station'*. Trials and pre-trial investigations over police and prison guards' mistreatment, often causing deaths of detainees, are also ongoing in **Hungary, Italy, France, Romania, Latvia and Cyprus**. In Latvia, 18 criminal cases over allegations of police violence were opened in 2010 alone.

There have also been a number of convictions during 2010. In **Cyprus**, seven police officers were sentenced to imprisonment in March 2010 for *'inhuman or degrading*

treatment" of detainees; their 37 co-defendants only avoided imprisonment due to a legal technicality, but had to pay compensation to the victims. 25 further police officers were imprisoned for perjury, conspiracy or assault in connection with the same case. In **Estonia**, the former warden of Murru Prison was convicted as an accessory to a murder of two inmates by other prisoners in 2006. The former security chief of the same prison was convicted of the cover up of that crime. One prison guard in **Hungary** was convicted for mistreatment of an inmate, and two others lost their appeal against earlier conviction for assaulting an inmate. In **Italy**, four police officers were convicted of manslaughter in 2009 for beating to death one Federico Aldrovandi.

3. Cover-up of abuse and impunity for misconduct

The real situation is probably even worse than the data above suggests, because the level of police abuse in many EU states is known to be underreported or even covered up.

The Council of Europe Committee for the Prevention of Torture (CPT) has criticised **Greece** for *'insufficient effort' to 'investigate, prosecute, and punish perpetrators of ill treatment'* as well as to prevent it. There is no *"adequately resourced police inspectorate" or a "credible, independent and effective police complaints mechanism."* *The US State Department report notes 'corruption and police impunity'.*

In **Romania**, complaints of police misconduct are usually investigated under 'internal disciplinary procedures' by the same police units where the reported officers work.

In Forest Prison, **Belgium**, two prisoners were hospitalised after being beaten by the police guards; the responsible police officers were suspended but then reinstated 'due to a legal technicality'.

In **Cyprus** in 2007, a man was allegedly *'taken to the Limassol police station, handcuffed, and beaten by an officer while five or six other officers looked on. As a result of the beating, he allegedly suffered a concussion and other head and neck injuries and was hospitalized for five days'*. Only one officer was subjected to disciplinary proceedings, and the disciplinary case is still pending.

A **Latvian** prisoner, Sergejs Danilins, died in 2008 after being severely beaten by prison guards. In 2009, the case was referred to the prosecutor's office; some of the guards were *'fined and suspended for one year'* in August 2009, but although the case still remains open, there have been no other developments.

Systematic impunity, with prosecutors and judges simply ignoring complaints of police mistreatment, is also reported from **Lithuania** and **Bulgaria**. In **Italy**, *'long delays by prosecutors and other authorities in completing some investigations undercut the effectiveness of mechanisms to investigate and punish police abuses'*. In **Austria**, *'the strict application of slander laws tended to discourage reports of police abuse'*.

4. Prison conditions

The conditions in prisons and detention centres *'did not meet international standards'* in **Austria, Bulgaria, Greece, Hungary, Latvia and Lithuania**. Other problems - such as overcrowding, dilapidated state of prisons, poor sanitary and hygienic conditions; inadequate toilet facilities, health care, lighting, heating, ventilation, privacy, quantity and quality of food, access to open space and fresh air, lack of hot water - were also reported from **Belgium, Cyprus, France, Italy, Portugal, Romania and Spain**.

In **Greece**, where a high number of EAWs are issued for UK citizens, often for teenage holidaymakers, the prison conditions are notoriously atrocious:

In his annual report in May [2010], the Deputy Ombudsman for human rights noted, *'that the situation in prisons had become "explosive" and that problems of the prison system, mainly caused by overcrowding, were chronic'*. The Ombudsman noted, as an example, *'the conditions at the Ioannina prison (northwestern Greece), which he described as "inhuman and degrading"*. Due to the lack of space, the inmates did not have adequate hygienic facilities and were either isolated or slept in bunk beds in the hallways. The UN special rapporteur echoed the observations in October and stated that some prisons he visited were severely overcrowded, with inadequate ventilation and *"despicable"* sanitary conditions.

'The Ministry of Justice reported that as of June [2010], the total prison population was 11,674 (an increase of 310 from June 2009), while the official capacity of the prison system was 9,103.

'Poor prison conditions led to multiple prison protests during the year at the Korydallos (Piraeus) prison hospital and at the Trikala (Thessaly region) and Diavata (Thessaloniki) prisons.

'The deputy ombudsman for human rights, NGOs, and media reported that female prisoners continued to be subjected to systematic, invasive body cavity searches. The CPT report stated that body cavity searches on women are carried out not "based upon a proper risk assessment but as a routine measure."

'In February [2010] the Police Association of Achaia, Peloponnese, reported that the conditions in the Patras police detention center were inhumane and degrading, with up to 60 persons held in a cell intended for a maximum of 14.'

Many prisoners complained to the COE Committee for the Prevention of Torture (CPT) about the lack of food, water, or bathroom facilities during the transfer between prisons.

According to the CPT, the prison conditions in Greece are not only far below *'international standards'* but also below the requirements of Greek domestic law, and the measures taken to improve the situation are *'limited in scope and not proactive'*.

Table 2. Severe prison conditions in EU member-states

Reported problems	Austria	Belgium	Bulgaria	Cyprus	Greece	Hungary	Italy	Latvia	Lithuania	Portugal	Romania	Slovenia	Spain
Conditions 'did not meet international standards'	●		●		●	●		●	●				
Conditions 'inhuman or degrading'					●				●				
Severe overcrowding		●	●	●	●	●	●	●	●	●		●	●
Poor hygiene / sanitary conditions					●	●	●	●	●	●	●		
Food/water shortages			●		●						●		
Inadequate heating			●					●					
Inadequate lighting						●			●		●		
Inadequate ventilation			●		●	●			●				
Inadequate toilet facilities			●		●	●		●					
Inadequate health care			●	●		●	●				●		
Inadequate access to open space and fresh air							●	●					
Juveniles and adults held together								●	●	●			
Suspects and convicts held together				●			●	●		●			

The European Court of Human Rights has found conditions in **Lithuanian** prisons *Lukiskes* and *Rasu* tantamount to *torture, inhuman or degrading treatment* for the purposes of **Article 3 ECHR**. The Lithuanian authorities still have not responded to this 2008 judgement. In 2009, the COE Committee for the Prevention of Torture visited detention centres in *Jonava, Rokiskis, Kupiskis, Siauliai, and Trakai*, and

concluded that *'in some cases conditions in these facilities could be considered inhuman and degrading'*.

In **Portugal**, - apart from the usual reports of mistreatment, overcrowding, inadequate facilities, poor health conditions, and violence among inmates, - **high rates of HIV/AIDS and hepatitis C** are a major problem. Approximately 10 per cent of the prison population are believed to be infected with HIV/AIDS, and 57 per cent of those also have hepatitis C. A consequence of that is the high death rate among prisoners, acknowledged by Portuguese authorities to be *'above the European standards'*.

According to the US State Department report on Portugal, *'Most of the guidelines and legislative proposals the government adopted in 2004 to reform the prison system were not applied in practice.'*

'Due to a considerable increase in predicted total costs, the government cut back on the five-year prison reform plan adopted in 2008. Only four of the 10 new prisons originally projected will be built, and two rather than three will be renovated.'

Overall statistics reflecting the prison conditions across the EU are not available. However, in **Poland** alone, *'during the year the human rights ombudsman received 7,233 complaints, compared with 7,158 in 2009, mainly regarding abuse by prison authorities, inadequate living conditions, inadequate medical care, and violations of mail and visiting rights'*. In **Lithuania**, the ombudsman received 865 complaints from prisoners (compared to 267 in 2009); 330 of them were upheld.

In **France**, in 2010 alone, at least 44 prisoners won lawsuits against the government over poor prison conditions or *'failure to respect human dignity'* of prisoners.

The suicide rates among prisoners are alarmingly high in some EU states. Thus, 118 prison suicides were reported in **France** in 2010. In **Italy**, between January and November 2010, 160 prisoners died in custody, 61 of them by suicide.

Problems of a similar scale as in Greece were reported in **Bulgaria**. The Council of Europe's Committee for the Prevention of Torture noted the practice of Bulgarian police to *'handcuff a prisoner to an immovable object when there was insufficient cell space for an inmate'*. Apart from inadequate heating, ventilation, medical service and toilet facilities and as well as severe overcrowding and mistreatment by prison guards, prisoners complain about the **quantity and quality of food**. The **daily food allowance** is approximately 3.20 levs (£1.44) per inmate. Bulgarian prisons are drug-ridden, drug addicts being at least 12 per cent of the overall prison population (according to the prison administration).

5. Overcrowding

Admittedly, prison overcrowding is not a purely continental problem or something unheard of in the UK. However, the extent of overcrowding in many EU member-states is much higher than in the UK.

Thus, according to the COE Committee for the Prevention of Torture, many cells in **Lukiskes Prison, Lithuania**, are overcrowded to "*an outrageous degree*", with **six prisoners** in a cell measuring eight square meters (approx. 86 square feet).

Nicosia Central Prison on Cyprus houses, at times, up to **737 inmates**, with the capacity for **350**. Most of the inmates are foreigners; suspects are held together with convicts. The prison also lacks a health centre, in spite of the ombudsman's recommendation over the past 10 years.

In **Italy**, according to the Ministry of Justice, **69,155 inmates** are held in a prison system designed to hold **44,066**. *'However, the uneven distribution of prisoners left a few institutions particularly overcrowded. Older facilities lacked outdoor or exercise space, and some prisons lacked adequate medical care.'* In some prisons, inmates *'lacked basic hygiene items'*, according to a COE Committee for the Prevention of Torture.

Dob Prison in Slovenia is overcrowded at **175 per cent of its capacity**. **Ljubljana Prison** has **240 inmates** whilst having a **capacity for 128**.

In **Spain's solitary cells**, the overall **inmate-per-cell ratio** is estimated to be **1.7**.

According to a report of the COE Committee for the Prevention of Torture (CPT), the **Borsod-Abauj-Zemplen Prison in Hungary** is severely overcrowded in almost all cells, with up to **four prisoners** in cells of eight square meters (**86 square feet**), **10 to 14 prisoners** in cells of 25 square meters (**269 square feet**), and up to **14 prisoners** in cells of 32 square meters (**344 square feet**).

The severe prison overcrowding in **Hungary** is only increasing, with prison population **132 per cent of capacity** in 2010, as compared with 129 per cent in 2009. As a result, *'Shortages of bed linens, towels, and clothing, and inadequate medical care remained problems. Sanitation and toilet facilities were also poor in some instances. In some prisons, toilets were not separate from living spaces. Many police holding cells did not have toilets and running water; lighting and ventilation were often inadequate.'*

75 per cent of all prisons in **Belgium** are reportedly overcrowded.

6. Detention without charge or trial

In this country, the recent proposals to legalise the detention without charge for up to 42 days in exceptional cases was rightly rejected as an unacceptable and outrageous threat to liberty. But do we realise that many of the continental states routinely detain people without charge or trial not for weeks, but for years?

The pre-trial detention may be extended to up to **six years in Italy** and to up to **four years in Spain**.

In **Portugal**, detention without charge may be extended for up to **three years**; following the charge, the detainee must be brought to trial within an additional

14 months, so the total time spent in pre-trial detention may exceed **four years**. If the suspect is not in detention (e.g. on bail), there is no time limit for bringing him to trial altogether.

In **Slovakia**, pre-trial detention may be extended for up to **four years**; or **five years** for those suspected of the most serious crimes.

The pre-trial detention may be extended for up to **18 months** in **Greece, Latvia** and **Lithuania**. In **Lithuania**, however, there were complaints of illegally prolonged detentions in 2010.

In **Slovenia**, pre-trial detention is limited to **four months**, but may be extended up to **two years** once the trial has begun. The trials often take from two to five years.

In most cases, the US State Department reports note that such extensions were frequent in 2010.

The **average length** of pre-trial detention is approximately **8 months** in **Portugal** and **7 months** in **Estonia and Lithuania**. In **Slovakia**, according to 2009 statistics, detainees were held on the average for **123 days** at the district court level and **299 days** at the regional court level.

7. Fair trial

The guarantees of fair trial in many EU member-states are reported to be deeply deficient (US State Department Annual Report).

The 'expedited trial procedures', which are practiced in **Greece**, '*undermined defendants' basic rights due to the brevity and swiftness of the trial*'. Under such procedures, the courts are not obliged to give the defendant sufficient time to prepare a defence.

In **Latvia**, where most cases are heard by a single judge, '*the fairness of individual court decisions, of judges, and of the judicial system in general remained a concern. As of December [2010] the ombudsman's office reported that it opened 26 investigations into complaints about the fairness of trials and courts.*'

In **Bulgaria**, '*Long delays awaiting trial were common, and there was a large backlog of outstanding investigations. Tough, statutorily mandated time limits for investigations often resulted in hasty indictments that judges returned for additional investigation.*'

In **Malta**, '*Lengthy delays in the judicial system sometimes diminished individuals' due process guarantees*'.

Last year, the UN Human Rights Committee found certain criminal appeals procedures in the **Netherlands** to violate the *International Covenant on Civil and Political Rights*.

Notoriously, foreign detainees are often not provided with an interpreter in Greece.

The right to legal representation is deficient in the law and practice of many EU states, especially the right to be interrogated in the presence of one's lawyer. In Hungary, *'the police or prosecutor is not obligated to wait for counsel to arrive before interrogating the suspect. According to human rights NGOs, police routinely proceeded with the interrogation immediately after notifying a suspect of his right to counsel.'*

In Lithuania, detainees complained to the COE Committee for the Prevention of Torture delegation that they were not informed of their right to a lawyer for hours after being detained. Most recipients of legal aid had no contact with their state-appointed lawyers before the interrogation or even until the first hearing in court. There were 12 complaints to the ombudsman during 2010 that legal aid counsel was not provided at all.

In Latvia, the ombudsman's office criticised investigators for the practice of *'unscheduled interrogations of detainees, or "talks," without legal counsel'*.

In Portugal, detainees complained to the CPT delegation that they were not informed of their right of access to a lawyer during police custody. *'In some police stations there was a "striking discrepancy" between the number of detainees who were recorded as having been informed of their rights and the number who actually exercised their rights.'*

In Romania, *'Some prisons did not provide for the confidentiality of discussions between prisoners or detainees and their lawyers in person or via telephone.'*

In Spain, frequent and lengthy delays are noted between the time a detained person requests a lawyer and the time a lawyer arrives.

8. Corruption in the law enforcement authorities and the judiciary

The trust in the integrity and independence of the judiciary and law enforcement authorities of all EU member-states, which is the very basis of the EAW system, is demonstrably misplaced. In many EU countries, corruption of the judiciary and the police are endemic.

For instance, the US State Department report on Slovakia notes: *'corruption, official intimidation of judges, inefficiency, and a lack of integrity and accountability continued to undermine judicial independence. In some cases the judiciary was subject to high-level influence and pressure by the judicial hierarchy. In some cases, judges felt they faced attempts to influence decision making as well as intimidation via disciplinary actions [...] There were reports that higher levels of judicial hierarchy misused their power and issued instructions to individual judges on how they should decide specific cases.'*

In fact, Slovakia's judiciary is torn apart by a furious civil war, which began after the

election of former Justice Minister Stefan Harabin as president of the Supreme Court in 2009, over Mr. Harabin's alleged links with organised crime (drug trade) and his alleged abuse of disciplinary powers to intimidate judges.

Over 12,000 people signed a petition protesting at his election as the head of the country's judiciary. There is an outstanding claim challenging Mr. Harabin's election, filed by several judges in the Constitutional Court. In September 2009, 105 judges made statements protesting the abuse of disciplinary powers against the independent judges, especially critics of Mr. Harabin, which has created an 'atmosphere of fear' within the judiciary.

There were further allegations that Mr. Harabin and his deputy manipulated the computerized system for random assignment of cases. Criminal and disciplinary proceedings on this matter were initiated by the NGO Fair Play Alliance. Mr. Harabin responded by filing a criminal motion against the Director of Fair Play Alliance.

A number of disciplinary cases were initiated against high-ranking critics of Mr. Harabin within the judiciary. After writing several critical articles about the state of the judiciary, District Court Judge Juraj Babjak, former Constitutional Court judge, is facing disciplinary action and possible demotion for alleged delays; the charge is widely seen as fabricated. Another critic of the judicial system, former Supreme Court Senate chairman Jozef Kandra, resigned last year, allegedly under pressure from unfair disciplinary proceedings initiated by Mr. Harabin. Allegedly, an attempt was made to fabricate a criminal case against Judge Katarina Javorcikova, a spokeswoman of the Society for Open Judiciary (ZOJ). After writing to the President of Slovakia to express concerns about the integrity of the judicial system, district court judge Stanislav Sojka faced disciplinary proceedings. Mr. Sojka was subsequently suspended from duty after filing a complaint against Mr. Harabin for abuse of power.

In 2010, judge Anna Benesova, who presided over Mr. Harabin's libel case against a daily newspaper, was disciplined and effectively forced to resign by the Judicial Council chaired by Mr. Harabin. According to Benesova, the real reason for ousting her was her unwillingness to decide the libel case in favour of Harabin. The replacement judge subsequently resolved the case in favour of Harabin.

Public confidence in the judiciary was further undermined by a campaign of wage discrimination claims submitted by over 500 judges, openly supported by Mr. Harabin and his allies. Some of these cases are being decided by judges who have filed similar complaints. Some of the judges were awarded compensation of up to 90,000 Euros. There were widespread allegations that Mr. Harabin and his allies had engineered this campaign in order to consolidate his power within the judiciary.

The state of judiciary in Slovakia is not exceptional on the continent. Thus, the report on **Romania** notes that *'The judiciary lacked impartiality and was sometimes subject to political influence. [...] There was a widespread public perception that the judiciary was corrupt, slow, and often unfair. [...] The return by the High Court of Cassation and Justice of case files to prosecutors for additional investigation contributed to frequent delays in court procedures and increased the chances of political interference in the judicial process.'*

The report notes frequent conflicts of interest undermining judicial impartiality, such as members of parliament practicing as attorneys, and the lack of effective mechanisms to address such conflicts of interest. In December four members of the judicial oversight body were re-elected to serve for the second term, which is prohibited by law; nevertheless, the re-election has been validated by the Senate.

Judicial corruption and inefficiency are noted in the reports on **Bulgaria, Greece and Italy**. In **Poland**, *'the judiciary remained inefficient and did not enjoy public confidence. The court system remained cumbersome, poorly administered, and inadequately staffed.'* In **Slovenia**, 55 allegations of *'police, prosecutorial, and judicial misconduct'* were investigated in the first nine months of 2010.

Police corruption is a serious problem in **Greece, Hungary, Lithuania and Slovakia**.

In **Hungary**, *'In the first 10 months of the year, authorities found 2,914 police officers responsible for breaches of discipline, 868 guilty of petty offenses, 310 guilty of criminal offenses, and eight unfit for duty.'*

In **Slovakia**, 171 police officers were prosecuted in 2009, mostly for abuse of power, battery, assault, or illegal intrusion into private homes. Six police officers were arrested for working as security guards in a brothel in Senec.

9. The Human Rights clause in S. 21 of the Extradition Act - a bogus safeguard

In theory, the Extradition Act 2003 contains a safeguard against possible human rights violations after an EAW extradition. Section 21 of the Act reads:

Human Rights

(1) If the judge is required to proceed under this section (by virtue of section 11 or 20) he must decide whether the person's extradition would be compatible with the Convention rights within the meaning of the Human Rights Act 1998 (c. 42).

(2) If the judge decides the question in subsection (1) in the negative he must order the person's discharge.

(3) If the judge decides that question in the affirmative he must order the person to be extradited to the category 1 territory in which the warrant was issued.

There have been hundreds of cases where defendants objected to extradition on these grounds, bringing excessive evidence of human rights abuses similar to the evidence presented above (indeed, the US State Department reports are usually the starting point). **Bearing in mind the facts given in this submission, one might expect that a considerable proportion of EAWs would be rejected on these grounds. In reality, however, not a single case is known where such an objection succeeded.**

The interpretation of Section 21 by the courts takes account of the *'underlying*

objectives of the EAW and that it is based on the EU doctrines of **'mutual trust'** and **'mutual recognition'**. That includes the presumption that the human rights of the suspect would be protected in any EU member-state just as well as they are protected in the UK - since all EU member-states have signed the European Convention on Human Rights. As Lord Justice Toulson says in *Targosinski v Judicial Authority of Poland* [2011] EWHC 312 (Admin):

The framework of the European Arrest Warrant scheme is constructed on a basis of mutual trust between the parties to the Convention, all of whom belong to the Council of Europe. The starting point is therefore an assumption that the requesting state is able to, and will, fulfil its obligations under the Human Rights Convention.

Lord Justice Sullivan says in *Agius v Court of Magistrates Malta* [2011] EWHC 759 (Admin):

The starting point for any inquiry for the purpose of making a decision under section 21(1) is the assumption (or presumption, it matters not) that the requesting state is able to, and will, fulfil its obligations under the Convention. Given the underlying objective of the EAW scheme, that assumption is not easily displaced.

Mr. Justice Mitting says in *Jan Rot v Poland* [2010] EWHC 1820 (Admin):

Category 1 states can be taken to have accepted between themselves that conditions of detention, and the adequacy of fairness of criminal justice systems in such states, will not be required to be examined by other States when considering extradition applications by them. For those reasons and in my opinion for the purposes of Articles 2, 3 and, if relevant, 8, the treatment of a person extradited to a category 1 State which is a signatory of the Convention is a matter between the individual extradited and that State and not between the individual and the United Kingdom.

I would hold that, save in circumstances in which the constitutional order of a Convention State was overthrown, by for example military coup or violent revolution, a District Judge considering the risk to an extradited person in the hands of such a State is not required to undertake an examination of conditions in its prison estate or of the management of psychiatric illness in that State. I find it difficult to conceive that evidence about such matters would be relevant and so admissible in extradition proceedings for the purpose of determining whether an individual should be discharged under section 21.

Lord Justice Toulson says in *Bartosiewicz v Poland* [2011] EWHC 439 (Admin):

We start with a presumption that the authorities in other Convention States will fulfil their responsibilities under the charter, and there is a heavy burden on an appellant to show that this will not happen in his particular case.

In practice, as experience shows, it is simply impossible to displace that presumption. It may be possible to demonstrate that someone extradited to Greece or to Spain would be **at risk** of mistreatment in the hands of the police or prison guards;

it is impossible to know in advance, and demonstrate with any certainty, that the mistreatment *will* occur in a particular case. Yet, under the present law, the courts require no less than that. Section 21 is a purely propagandist fig leaf, an abstract declaration devoid of any practical legal substance.

It is hardly wise to put the blame for this situation on the judges who read the law in this way rather than on the legislators who have written it. Thus, Lib-Dem MEP Baroness Ludford, whose party supported the EAW most enthusiastically, responded to my criticism of the EAW system by writing to me as follows:

UK courts are failing to use the power they have under S. 21 of the 2003 Extradition Act - an amendment which Lib-Dem peers backed by Tories secured in the Lords and I had the privilege to be there to vote for - to refuse an EAW if it would breach fundamental rights...

I have raised this failure with the M[Ministry] of J[Justice]; they cannot tell judges what to do but I hope they might probe why this explicit power is not being used.

The UKIP position of opposing... the EAW... completely lacks credibility... The only sensible position is the Lib-Dem one: yes to crime-fighting powers but yes to human rights safeguards too.

Clearly, the noble Baroness's enthusiasm for the European ideal has made her confuse Britain with Slovakia. In this country, courts follow the law as enacted by the Parliament, not the instructions from the Ministry of Justice. If that produces unfair decisions, this can only be helped by legislative changes.

Indeed, how else could the judges interpret the present law if their hands are tied by the 'mutual recognition' provisions? Any alternative reading of the law would have effectively invalidated the whole EAW system, which was clearly not an intention of the Parliament.

The EAW system is based on a utopian vision of a Bulgarian policeman being as good as a British policeman, a Romanian judge being as good as a British judge, and a Greek prison being as good as a British prison. So long as this delusion is enshrined in law, the atrocious human rights abuses are inevitable; and without it, the EAW regime cannot survive.

10. No protection against malicious EAWs

Given the diversity of legal systems in the EU, very different authorities are given the power to issue EAWs in different countries. In some EU states, that power may be exercised under political influence; in some others, it is given to notoriously oppressive or corrupt institutions. In Spain, for example, any 'investigative magistrate' may issue an EAW without any further scrutiny. The system of 'investigative magistrates', inherited from the Franco regime, is peculiar to Spain's inquisitorial legal tradition. It is often criticised in Spain and internationally (e.g. by Amnesty International) as unsafe and abusive, since it permits lengthy pre-trial detention without charge and without judicial scrutiny. Last year, the Spanish government announced it would eventually

abolish 'investigative magistrates' as an institution. In the meantime, an 'investigative magistrate' still has the power to issue European Arrest Warrants, which courts in Britain have to obey without question under the EU doctrine of 'mutual recognition'.

In effect, the EAW regime puts innocent citizens at risk of lengthy imprisonment and mistreatment without a sufficient judicial scrutiny of the case against them. There are countless reasons why such a situation is totally unacceptable; but one of the greatest dangers is this. As history shows, wherever administration of justice is not controlled by reliable safeguards of liberty, it is only a matter of time before it becomes abused for political persecution, personal revenge, and other *mala fide* purposes. Institutionally, such a system contains the seeds of Stalinist terror, where a 'grudge informer' may easily trigger a persecution of his neighbour, and nobody is safe from the horrible consequences of a false denunciation.

There are sinister signs that the EAW system has already taken this slippery route. Cases are known where the *bona fides* of the prosecution are doubtful at best, and there is every possibility that EAWs are issued for political or other improper reasons. It is shocking to think that British courts and law enforcement authorities are now under a legal duty to take part in persecution of this kind.

11. The case of Andrew Symeou

Andrew Symeou, a British citizen, was extradited to Greece in 2009 on the charge of manslaughter of another British holidaymaker in a night-club. The evidence against him is extremely weak and, it is suspected, has been fabricated by the Greek police. Two witnesses have withdrawn their statements implicating Mr. Symeou as soon as they were released from custody of the Greek police, and claimed those statements had been extorted from them by mistreatment, beating and intimidation. The wording of the other five witness statements is identical to each other, so it is suspected they were written by the police. Later, four of those witnesses admitted they did not actually see the crime being committed. On the top of all this, the description of the perpetrator given in their statements does not match the description of Mr. Symeou.

However, the British court had no power to assess the evidence. Even though the judgement recognised the EAW system could 'be a matter for legitimate debate or concern', the court felt obliged to order extradition on the force of a piece of paper sent by Greek authorities. During the extradition proceedings, Mr. Symeou unsuccessfully sought to rely on the human rights provisions of the Extradition Act 2003, S. 21. However, the court found that, under the EU doctrine of '**mutual recognition**', it had to trust the Greek prison system and trust the Greek courts would respect Mr. Symeou's rights.

Mr. Symeou was initially refused bail in Greece on the grounds that he was a foreigner who had no permanent address in Greece. He spent almost a year in Greek prisons, including Korydallos, which is one of the most notorious prisons in the world. Andrew Gilligan writes about the case in the *Daily Telegraph* (21 August 2010):

'Andrew, who, could not speak Greek, spent almost a year in some of Europe's least civilised prisons. At Patras, he was unable to wash, and was taunted by the guards

as an "English ****." They made him pack his kit with handcuffs on, laughing at his inability to manage it, then squeezed toothpaste into his bag, so he got to his next prison with toothpaste all over his clothes.

'At Korydallos, he witnessed three riots. He would lie in bed, said his father, "and cockroaches would be dropping from above. He'd wake up in the morning with them crawling on him".'

In the Greek prison, Mr. Gilligan reports, Mr. Symeou, 'slept on a concrete platform in sauna-like heat'. When finally released on bail in 2010, Mr. Symeou was psychologically devastated. It is only now, almost four years after the alleged crime (20 July 2007), that the trial in Greece has begun. The life of Mr. Symeou and his family has been completely ruined, and it is still not known, when this will end.' The full horrors of what Mr. Symeou has experienced in Greek prisons is too long and shocking to be recited here.

Mr. Symeou's long delayed trial eventually took place and ended on 17 June 2011. The Greek court found him not guilty, the day after the Public Prosecutor had recommended acquittal. Andrew Gilligan reports in the Telegraph on 18 June, "Denzil Hiles the father of the 18 year-old Johnathan Hiles, the murder victim, walked across the courtroom and shook his hand. They hugged, Andrew's body shaking with sobs. "I didn't do it, I didn't do it", he wept, "I'm so sorry about your son." This has been a tragedy for two families, the Symeou and the Hiles. One young man has experienced tremendous injustice and the trail of the killer has long gone cold. If a British court had been allowed to look and consider the *prima facie* evidence and had powers to deny extradition they would most likely have prevented both at the outset.

12. The case of Dr. Miguel-Angel Meizoso

My constituent Dr. Meizoso, 60, is an Argentinean-born psychotherapist who has lived in the UK since 1991, working for the NHS and pursuing an academic career. He is a Spanish citizen and the President of the International Foundation Can Mossenya - Friends of J. L. Borges, created in 2002 by the Spanish Government to run a national heritage site Can Mossenya on Majorca. A Westminster Magistrate has ordered his extradition to Spain under an EAW, and the order was upheld in the High Court; Dr. Meizoso's application for leave to appeal is now before the Supreme Court.

The EAW has been issued by an **investigative magistrate** in a **private prosecution** case. The warrant itself only alleges that Dr. Meizoso used deceit to obtain the powers of attorney in order to set up the Foundation - this, of course, sounds like a proper offence of fraud. In fact, the allegation in Spain is that, having become the president of the Foundation, he intends to abuse his position to sell this valuable land at Can Mossenya and enrich himself - a crime he never committed, but it is alleged he '**wants to commit in the future**'. This is what constitutes the alleged deceit referred to in the EAW. This does not sound very persuasive, especially since implementing such a scheme seems quite impossible under the Spanish law and the Foundation's Constitution.

Furthermore, Dr. Meizoso has evidence that the EAW results from a scheme by corrupt elements in Majorca's local government, aiming to remove the protected status from

Can Mossenya and make the land available to their cronies in property development business. The Catalan separatist elements in Majorca government may also have a grudge against Dr. Meizoso because he had opposed the pressure to adopt the Catalan language for his Foundation's activities and web-site and defended its status as an international foundation under the auspices of Spanish central government.

Of course, under the EAW regime, he is not allowed to place any of this evidence before a British court; nor is the court allowed to examine any evidence against him - or, in this case, the lack of any evidence.

If extradited, Dr. Meizoso may be kept in pre-trial detention at the discretion of the investigative magistrate for up to two years before any formal charges are made - or not - before a Criminal Court. Nevertheless, Lord Justice Moses felt compelled to rule in the High Court that, in the EAW context, 'prosecution' should be understood widely enough to include the investigation stage under the inquisitorial procedure of South European legal systems.

13. The case of Julian Assange

The facts of this case are well known and need, perhaps, only a brief reminder. Julian Assange is the founder of the Wikileaks web-site, which has made a number of revelations concerning international politics, embarrassing for the governments of the United States and other countries. At the peak of the most recent Wikileaks scandal, as the web-site began publishing 250,000 of leaked US diplomatic cables, Sweden issued an EAW against Mr. Assange on the accusation of rape and other sex crimes. The allegation is based on a complaint by a former lover of Mr. Assange, who is a political activist in Sweden, that, although they had sexual relations by consent, his behaviour during some of the dates amounted to sex crimes (e.g. he allegedly declined to use a condom after being explicitly told to do so).

There is every reason to suspect the case is a political fabrication. The EAW was issued at the time of a major political scandal around Wikileaks. It is known that a number of governments at that time made attempts to block the Wikileaks activities by putting pressure on the web providers to close the website and on banks to arrest the associated accounts. It is also known that the US authorities were contemplating the possibility of criminal prosecution of Mr. Assange over the Wikileaks revelations. It is also known that the Swedish government made representations to the UK government at the very top level, indicating their interest in a successful extradition. All in all, it seems most unlikely that Mr. Assange is wanted in Sweden solely for his romantic adventures; indeed, the case strongly smells of a political fabrication.

If extradited, Mr. Assange may be tried behind closed doors to protect the privacy of the complainant. Furthermore, judges at the low-level court where the trial is likely to take place are said to be normally nominated by Swedish political parties and therefore may be politically motivated. In these circumstances, the fairness of the trial is far from guaranteed.

It is also feared that Sweden may re-extradite Mr. Assange to the United States.

14. The Crete Five

The 2010 extradition of Daniel Bell, Sean Branton, Benjamin Herdman, George Hollands and Curtis Taylor, also known as the 'Crete Five', to Greece, is another notorious case. The five UK citizens, all in their early 20s, are accused of seriously injuring another British holidaymaker in a drunken brawl on Crete. All the suspects maintain their innocence, and the evidence implicating them appears to be very weak. Indeed, it is known that the Greek prosecutorial authorities have been quite reluctant to go ahead with the prosecution.

If a similar situation occurred in Britain, our prosecution authorities can be trusted to take a proper prosecutorial decision notwithstanding the pressure. In Greece, the position is not necessarily similar. In an interview with my researcher, a respected Greek lawyer involved in the case defended the decision to prosecute Mr. Bell and others in the following terms: *'In theory, one is supposed to be innocent until proven guilty. This may well be true in Britain, but we in Greece follow a different principle in practice: there is no smoke without a fire'*.

It is plainly unacceptable that the EAW regime exposes British citizens to a 'no smoke without a fire' kind of justice.

As likely as not, we only know a small portion of cases where EAWs may have been improperly issued. In this sense, the rapid growth in the number of EAWs is particularly worrying. It certainly does not reflect a rise of crime rates across Europe; but if so, one may well ask why should the number of EAWs received in the UK grow at approximately 50% p.a. Can it be that what is actually growing is the abuse of the system, with a higher and higher proportion of EAWs being issued maliciously?

15. The case of Michael Turner and Jason McGoldrick

In 2005 the small marketing business of Michael Turner and Jason McGoldrick based in Budapest collapsed. Their failed business venture cost them their savings of £100,000 and they returned home to the UK. In 2008 the Hungarian authorities issued an EAW citing 'Fraud' relating to £18,000 allegedly owed to creditors. Had this occurred in the UK it would most likely have been a purely civil matter; however they were 'judicially surrendered' under an EAW in November 2009.

At a British airport they were handed over to Hungarian 'special forces' who refused to identify themselves. In Hungary they were refused access to the British consulate. They were separated and given no news of each other. After several days their Hungarian lawyer found their location but was refused access. The British Consulate tried to assist and asked for the prison rules where they were being kept. He was told, *"They do not have the rules in English"*; however the Consul official pointed out that he had just visited another prisoner who had them in English, given to him by the same prison officer who claimed they did not exist.

On remand for a minor accusation they were locked in a small cell with three other prisoners for 23 hours per day. The 'food' was pushed through a hatch and consisted of mainly pork fat and stale bread. Showers were weekly, if at all, and clothes washing

had to be carried out in the small cell. If the prisoners could not afford soap or toilet paper then they had to go without. The prison was violent and abusive and Jason McGoldrick suffered actual violence inside the cell. Any complaints against cellmates are dealt with by guards inside the cell. Two of the prisoners they shared cells with openly admitted the violent murders they were accused of. The little property they had with them was stolen by other prisoners; this had the small benefit that they were no longer targets for theft.

Messrs Turner and McGoldrick were instructed by the Hungarians to sign documents they did not understand and that they would be denied 'privileges' if they didn't. Their lawyer suggested the quickest way home was to plead guilty to something so that he could negotiate a short prison sentence. My colleague **William Earl of Dartmouth MEP** became involved in the case and travelled to Hungary to secure their release. They were released in March 2010 but without any documentary or verbal explanation of the basis on which they were being released. They returned to the UK. In April 2010 they voluntarily returned to Budapest at their own expense to answer further questions from the police.

There is insufficient space here to catalogue the full horrors that they experienced under the Hungarian police and judicial systems. The financial and personal strain on these two men and their families has been enormous. The matter is still not resolved and they could face extradition again under an EAW at any time.

16. Reforms at the EU level?

The EU itself has now officially acknowledged that the irresponsible EAW scheme is causing human rights abuses at a massive scale. The latest European Commission report on this matter recites all the usual ritual formulae of praise and commitment to the EAW, but then admits the following 'remaining imperfections, notably when it comes to its implementation at national level':

- *'no entitlement to legal representation in the issuing state during the surrender proceedings in the executing state';*
- *'detention conditions in some Member States combined with sometimes lengthy pre-trial detention for surrendered persons';*
- *'the non-uniform application of a proportionality check by issuing states, resulting in requests for surrender for relatively minor offences';*
- *'despite the fact that the law and criminal procedures of all Member States are subject to the standards of the European Court of Human Rights, there are often some doubts about standards being similar across the EU';*
- *'recourse to the European Court of Human Rights... has not proved to be an effective means of ensuring that signatories comply with the Convention's Standards'.*

Nevertheless, this and other EU documents on the matter are written in a

characteristically complacent manner, shamelessly hailing the 'successes' of the EAW, only mentioning its inherent injustices and abuses as *'remaining imperfections'*, and blaming anybody except the EU itself. Needless to say, such language is thoroughly insulting to all those innocent people whose lives have been ruined by the EAW, and to whole nations whose liberties have been undermined. This manner of admitting failure would be typical of a totalitarian regime's propaganda, but, would never be tolerated from any democratically accountable government.

The EU's promises to improve the situation are not persuasive. Firstly, as history has shown, no successful reform is possible in a system where every critical proposal must be accompanied by a hymn praising the existing practices. It is a commonplace that a fair assessment of the situation, a fair search for the roots of the problem is a vital pre-condition of any successful reform. No such search is possible in a system like the EU, where a slightest criticism of the regime must always be balanced by a great deal of flattery.

Thus, the Commission report opens by a cynical joke that replacing a proper extradition process by an automatic EAW surrender ***'has undoubtedly reinforced the free movement of persons within the EU'***. The earlier Council 'roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings' also starts from celebrations and then shyly proposes 'further improvements': ***'a lot of progress has been made in the area of judicial and police cooperation on measures that facilitate prosecution. It is now time to take action to improve the balance between these measures and the protection of procedural rights of the individual'***.

Hopefully there is no need to remind the distinguished British lawyers sitting on the Panel that such an approach is wholly unacceptable in this country, as a matter of a fundamental principle. In our legal tradition, the guarantees of rights and liberties should come first, and any considerations of efficiency or speed only come second. The opposite approach adapted by the EU would have been reprehensible even if it was a wholly internal affair of a foreign country. It is absolutely intolerable when, as now, it is being imposed on this country.

Secondly, the EU's reform proposals do not go nearly far enough to provide effective human rights guarantees. The Council's 'roadmap' identifies the following six 'priority measures' to take at EU level:

- *the right to interpretation and translation;*
- *the right to information about rights (Letter of Rights);*
- *pre-trial legal advice and at-trial legal aid;*
- *a detained person's right to communicate with family members, employers and consular authorities;*
- *protection for vulnerable suspects;*
- *a green paper on pre-trial detention.*

In addition to that, the EU has now criticised Poland for issuing too many unnecessary EAWs, and issued an amended 'handbook on EAWs' for all the member-states, advising them to consider the question of proportionality before issuing any EAWs. The EU's criticism of 'some members states' for 'over-using' the EAW has been echoed

by major EAW apologists in this country. Poland has already rejected all this criticism.

All in all, the EU promises do not include any protection of detainees from torture, mistreatment, harsh prison conditions, detention without trial for up to six years, police corruption and impunity or judicial corruption.

Thirdly, even the extremely limited reforms promised by the EU are being implemented very slowly. The above-mentioned 'six priority measures' have been planned in November 2009. A year later, the EU has issued a directive on the right to interpretation and translation in criminal proceedings. At present, it is working on a directive on the second 'priority measure' - informing the suspects about their rights. At this speed, one can hope that all six directives will be written (fingers crossed) by 2015; but then, there is still a long way between issuing a directive and any improvements it may or may not produce in real life. In the meantime, thousands of people, many of them innocent, will become victims of the European Arrest Warrant every year.

Therefore, any hopes of the system being improved by the EU itself would be entirely unrealistic and misplaced. Emergency measures to protect the rights and liberties of UK citizens (and others in UK jurisdiction) must be taken **now**, and can only be taken **at the national level**.

17. Recommendations

After seven years of living under the EAW regime, it is clearer than ever that it is entirely indefensible. No credible case can be made for keeping the EAW. The only counter-argument offered by its apologists, such as the Lib-Dem MEPs, is that the opponents of the EAW are on the side of criminals - a patently ludicrous smear.

It is, no doubt, a beautiful dream that Bulgarian and Romanian justice will, one day, reach such heights that life and liberty of British citizens could be confidently entrusted to it. This day has not come. In the real world, it should be a duty of the British justice system to protect British citizens.

The European Arrest Warrant poses a grave and immediate threat to our liberty. What is needed to defend ourselves against this threat is not just a reform or some additional safeguards, but an effective abolition of the EAW regime in this country. Indeed, as we have seen above, there is no compromise solution: we either accept the regime of 'mutual trust' or not. In this case, where the liberty and rights of British citizens are at stake, a blind trust in Bulgarian or Romanian justice is insane. Therefore, we have to go back to a proper system of extradition, where the foreign extradition requests would be subjected to the usual scrutiny by the government and the courts.

To those who say this cannot be done while we stay in the EU, the obvious answer is: well, in that case, here ends the debate over our EU membership. If being in the EU means exposing innocent British citizens to a risk of persecution, torture, or detention without charge or trial - then, hopefully, few would disagree that we have to be out. Surely, this is where we have to draw the line - if we are to draw it anywhere at all.

In reality, however, a unilateral opt out from the EAW scheme is possible even without a full withdrawal from the EU. The truth is that the EU needs us more than we need the EU. If we opt out of the EAW and make it very clear that this decision is not negotiable, the EU will have little choice but to acquiesce. Legally, all the EU can do is sue the UK in the 'European Court of Justice' for not implementing their 'Framework Decision'. In reality, if the government takes a firm stance on this issue, the EU is likely to refrain from stepping up the confrontation.

Automatic extradition (Judicial Surrender) denies protection under the English and Scottish legal systems to UK citizens and those residing on our shores. Judicial Surrender exposes British citizens, not only to injustice, but to possible inhuman and degrading treatment under lengthy pre-trial detentions. Such practices are not only unfair but might be in breach of international conventions, e.g. the UN Convention against torture, inhuman and degrading treatment, and therefore illegal.

Therefore, what is necessary is very clear legislation to be enacted by Parliament, replacing the EAW with an Extradition Act that primarily protects the liberties and freedoms of British citizens, treating requests for extradition from EU member states to the similar procedures and conditions to those applied to extradition requests from outside the EU.

On that basis I make the following suggestions for a new Extradition Act.

1. The UK courts to have the power and the duty to look at the *prima facie* evidence and only order the extradition of the suspect if they are satisfied that the requesting state has presented a credible case to answer.

2. The court must have the power and the duty to satisfy itself before granting extradition, that the requesting state has proper prosecutorial and judicial practices where the human rights of the suspect will be protected. In particular, before ordering extradition, the court must be satisfied that, if extradited, the suspect will not be **at risk** of suffering:

- torture or mistreatment;
- inhuman or degrading prison conditions;
- excessively lengthy detention;
- unfair trial; or
- other human rights violations.

This assessment must be based on the **facts** and not on the '**mutual trust**' presumptions. Any declarations made by the requesting state or its participation in the international conventions such as ECHR should be deemed immaterial; the courts must look at the actual practices of the requesting state.

3. The **forum** provisions of the Extradition Act should be strengthened, so that if the court considers that the extradition may expose the human rights of the suspect at risk, arrangements can be made for the trial to take place in the UK.

4. The courts should have the power and duty to apply the **proportionality test** to determine whether the alleged offence is sufficiently serious to merit extradition. The application of this test should not be entrusted to the requesting state.

5. The Home Secretary must have the power to refuse extradition if, having regard to all the circumstances of the case the extradition is deemed not to be safe. The Home Secretary should have the power to refuse extradition, for example: where there is reason to believe that the charge may be the result of corruption in the police or judicial system; that is it politically motivated; where, in his/her judgement the accused person may not be assured of a fair trial.

END

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