The European Arrest Warrant's ongoing threat to civil liberties & national security

Torquil Dick-Erikson *explains why the European Arrest Warrant remains a threat to British citizens' civil liberties, and to national security. Worryingly, even a no-deal Brexit may not be enough to free ourselves from it.*

How many in government, at any level, are aware that the European Court of Human Rights declared that up to five years in prison awaiting, not just trial, but a prisoner's first appearance in a public hearing in open court, is perfectly legitimate and a 'reasonable time' under the Convention's article 6, on the grounds that this preventive 'detention … is intended to facilitate the preliminary investigation'? This judgement, rejecting an application from an Italian against Italy, dates from the mid-eighties, but is now necessarily a part of that Court's jurisprudence – its settled doctrine – and so is still relevant today. It demonstrates clearly the Court and the Convention have no place for *habeas corpus*.

The power to issue arrest warrants, to be followed by lengthy imprisonment with no public hearing, without showing any *evidence* of wrongdoing, obviously confers a power of misuse and abuse on whoever holds it. It can be employed with spurious accusations against political adversaries; and in continental Europe, where this power is held by often unaccountable judiciaries, it is employed not infrequently.

The above judgement of the ECtHR shows that a State's being a signatory of the European Convention is no guarantee at all that it will safeguard, say, *habeas corpus* rights to a prisoner. The Convention merely says a 'reasonable' time, but

does not specify what is ‘reasonable’. The Court says up to five years is ‘reasonable’.

How many have noticed the EU has nominated Ms Laura Kovesi, a member of the Romanian judiciary, to be their first European Public Prosecutor (EPP)? Romania’s judiciary is the most heavily criticised in Europe for corruption and for being used as a blunt weapon to repress political opponents. A joint report by The Freedom Association and the Research Centre on post-Communist Economies gives details, drawn also from material published in the *Guardian*, to show that even the Romanian showcase ‘anti-corruption unit’ (‘DNA’), from whose ranks the new EPP is drawn, is itself riddled with corruption and political manipulation. Ms Kovesi is named on page 8 in the report as being the Chief Prosecutor, so at the heart of the sham ‘anti-corruption unit’. Yet she has been chosen as the EU’s first, all-powerful, European Public Prosecutor.

Not enough publicity has been obtained for the Learned Opinion, given by Jonathan Fisher QC to Christopher Gill, as to the powers that the EPP will have to issue European Arrest Warrants (EAWs) against anybody in the UK, and that our judiciary will be powerless to resist this as long as we are subject to the Extradition Act 2003, which enforces the EAW in the UK. It is therefore unlikely that anyone in government circles is aware of this sword of Damocles hanging over all of our – and indeed their – heads.

On receipt of an EAW issued by the EPP, or by any judicial authority in a ‘Category 1’ country, our own judiciary is bound by the provisions of the Extradition Act 2003 and cannot ask to see, let alone assess, any evidence or lack thereof already collected against the prisoner by the issuing State. This fact is known (at least to Members of Parliament), but needs to be reviewed in connection with the above-listed facts. A threat to ‘human rights’ is allowed as grounds to refuse an extradition, but these have to be as defined by the ECHR – which, as we have seen, is quite insufficient in terms

of *habeas corpus* rights.

The wording of the Extradition Act 2003, which is the basis of the EAW, makes no explicit reference at all to the EU. The EU member states with whom EAWs are issued and received are simply listed and called ‘Category 1 countries’. The fact that the EU as such is not mentioned in the text of the Extradition Act 2003 means that on 31 December next, even if we leave with No Deal, the legal effects of the European Communities Act 1972 and subsequent amendments will at last fall away, but the Extradition Act 2003 will still stand regardless. So any ‘judicial authority’ in any ‘Category 1’ country (and this includes prosecutors) will still be empowered, after Brexit, to have anybody in the UK arrested, trussed-up, and shipped over to any dungeon in Europe.

Parliament must therefore repeal or radically amend the Extradition Act 2003, so that a UK court, when faced with an extradition request from any foreign State, is empowered to demand to see and assess the evidence of a prima facie case to answer already collected by the requesting State. Should there be no such evidence, or if it be so flimsy as to show that there is in fact no case to answer, the UK court must have the power refuse the extradition request and order that the prisoner be freed at once.

The risk remains that an unamended or unrepealed European Arrest Warrant will be offered up as a bargaining chip for a UK-EU trade deal. Or even that it will remain standing in the case of a No Deal. In *either case* it would remain a fetter on our freedom and on our sovereignty. The Extradition Act 2003 needs to be explicitly and radically amended: the repeal of the European Communities Act 1972 alone is not enough to free the UK of these entanglements.