

Human Rights abuses in European Arrest Warrant member states

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Due Process

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Foreword

This report brings together, for the first time, data and a contextual analysis concerning key aspects of the performance of the European Arrest Warrant (EAW) over recent years. Written from a UK perspective by experts who have a passion for human rights and due process, it not only presents key evidence and insights on those countries that the UK most commonly surrenders people subject to EAWs to, but it also presents new evidence on which EU states are the worst violators of human rights according to the judgements of the European Court of Human Rights.

As such, this report seeks to inform an area of debate all too often overlooked by mainstream politicians, journalists and opinion formers.

Whilst a few have argued that the EAW, with its fast track extradition procedure and presumption of parity in quality of EU member state justice systems, does not adequately protect individuals from human rights abuses, this report reveals that along with the likes of Russia, Turkey and Ukraine, there are indeed EU countries which have similar – and in some instances worse – human rights records and which need to be treated with an urgent wariness.

Time and again, this report shows that the European Arrest Warrant does not adequately protect human rights or ensure due process.

Whilst the EU assumes that under the auspices of the EAW all member states should be treated with equality and reciprocity, this report demonstrates that in reality there are wild variations in legal and humanitarian practices between states.

Under the EAW system, UK judges are not allowed to reject EAWs because of a lack of evidence. Judges are automatically precluded from looking at the *prima facie* case. This alone leaves the system open to incompetence and widespread abuse.

Such political and judicial ‘blind spots’ should be of concern to anyone who believes that human rights, as laid out by the European Convention on Human Rights (ECHR), should be respected. It is important that the flaws of the EAW system and their potential for human rights abuses are not only acknowledged but safeguarded against, especially as UK seeks to leave the EU and its various institutions.

The report argues that the UK should stop extraditing people to those EU states where politicians and judiciaries frequently conspire to undermine due process and abuse human rights with unfair trials and inhumane prison conditions. Whether individual readers favour Brexit or Remain is irrelevant. What matters, is a better way forward – not least for many of the EU countries highlighted by the research at the heart of this study.

Executive Summary

- This report highlights which countries the UK most commonly surrenders people subject to EAWs to, and assesses which EU countries are the worst violators of human rights relevant to extradition according to European Court of Human Rights (ECtHR) judgements.
- The report reveals that whilst it is commonly accepted amongst British politicians, journalists, judiciary and members of the public that countries like Russia, Turkey and Ukraine are regular human rights abusers and therefore should be treated cautiously when it comes to extradition, there are also EU countries which have similar – and in some instances worse – human rights records which are not treated with the same wariness.
- The European Arrest Warrant (EAW) is the cornerstone of an extradition treaty between members of the European Union (EU). The EAW system allows arrest warrants issued by any EU member country to be executed in any other EU member state for prosecution, detention or imprisonment.
- The grounds for appeal against an EAW are very limited. Appeals are only allowed based on political motivation and/or the expectation of human rights abuses.
- Of the 4,803 people the UK surrendered to other EU countries, more than half were extradited to Poland (2,499). The next greatest numbers of people extradited were to Lithuania (480), Romania (358), and Latvia (225).
- From 2013 to 2016 the UK made a total of 1,024 requests for extradition to the UK, with these requests resulting in 661 arrests in EU member states. Of the 1,024 extraditions sought, just 551 people were actually surrendered.
- While the report highlights specific concerns with Greece, Poland and Romania, it finds Romania to be by far the worst violator of human rights within the EU. With a total of 272 violations of human rights found by the ECtHR from 2014 to 2017, Romania had over 100 more judgements against it than the next worst country in the EU.
- The vast majority of Romania's violations were under Article 3 and Article 6 of the ECHR (238 of the 272). In terms of inhuman or degrading treatment, Romania ranks consistently behind only Russia in the Council of Europe. For violating the right to a fair trial the only worse offenders among the 47 Council of Europe members are Russia and Turkey.
- Of the 104 violations found in Romania by the ECtHR for inhuman or degrading treatment, the vast majority occurred in detention. The ECtHR has consistently found that Romanian prisons are overcrowded, with space far below the legally required minimum per person.

- In Romania, case after case has brought disgusting prison conditions to light; with infestations of bed bugs and vermin, inadequate washing facilities for prisoners, and cold, damp, dirty cells being the norm.
- Though the ECtHR has censured Romania for these violations over successive years, the country has not taken sufficient action to bring its prisons up to standard and so violations continue unabated.
- This means that as a matter of urgency, the British political and legal establishment need to deal with the harsh disparities in justice and human rights that now exist between different member states of the EU, and abandon its dangerous assumption of parity.
- As part of the Brexit process, the UK should halt extraditions to the EU countries of concern highlighted in this report: top of the list being the leading human rights and due process abusers Romania and Greece, as well as Poland, to which the greatest number of people are surrendered from the UK and which has a poor human rights record. Already, the Irish High Court has recently refused extraditions to Poland on the grounds that there is grave political interference in the appointment and workings of Polish judges. The High Court of Justice should now follow by considering a similarly urgent stance both against Romania, Greece and Poland.
- Given the scale, depth and breadth of the abuses of human rights and due process by some EU member states the British Home Secretary, the Rt. Hon. Sajid Javid MP, should proactively use key mechanisms at his disposal, such as Humanitarian Protection, to halt the extradition of people to those EU countries which not only regularly violate human rights and due process, but which repeatedly renege on their assurances to British courts. Top of this list comes Romania.
- The UK government should use Brexit negotiations as a platform from which to redesign the EAW system and therein free up British judges to act as a bulwark against abuses of due process and human rights in key parts of Europe. This should include the right of British judges to evaluate whether there is a *prima facie* case to warrant a trial and extradition in the first place. If British judges remain precluded from evaluating evidence and the *prima facie* case, then this is not only a disaster for British justice but it amounts to a missed opportunity – for it denies the very real contribution that British justice can make in incentivising and improving the due process and human rights practices of several continental countries that deserve better.
- Given heightened levels of international lawfare, and information warfare, it is important that the British Prime Minister, Home Secretary and High Court understand the urgent national security implications of such reforms. For if swift action is not taken to reform the EAW system, then the UK and its allies in NATO and the EU will increasingly be left open to a plethora of failing legal systems in key parts of Central and Eastern Europe that could all too easily benefit those with more authoritarian political motivations, including Putin's Russia.

1. Introduction

The UK has a responsibility to ensure that when it extradites people overseas it is not surrendering them to countries which regularly abuse human rights. Over successive years, a number of NGOs, politicians, journalists and individuals have raised concerns that the European Arrest Warrant (EAW), with its fast track extradition procedure and presumption of parity in quality of EU member state justice systems, does not adequately protect individuals from human rights abuses.

This report highlights which countries the UK most commonly surrenders people subject to EAWs to, and assesses which EU countries are the worst violators of human rights relevant to extradition according to European Court of Human Rights (ECtHR) judgements.

The report reveals that whilst it is commonly accepted amongst British politicians, journalists, judiciary and members of the public that countries like Russia, Turkey and Ukraine are regular human rights abusers and therefore should be treated cautiously when it comes to extradition, there are also EU countries which have similar – and in some instances worse – human rights records which are not treated with the same wariness.

Whilst extraditions to EU countries with poor human rights records continue, the UK has extradited only one person to Russia in the last 14 years, partially due to Russia's dire human rights record¹. Extraditions to Turkey have also been refused on the basis of human rights concerns arising from prison conditions² and grave concerns remain with Ukraine, a country riven with accusations of political interference in the judiciary and woefully inadequate practices when it comes to prison conditions and human rights³.

This political and judicial 'blind spot' should be of concern to any person who believes that human rights, as laid out by the European Convention on Human Rights (ECHR), should be respected. It is critical that the flaws of the EAW system and potential for human rights abuses within it are acknowledged and safeguarded against as the UK leaves the EU and its various institutions.

What is the European Arrest Warrant (EAW)

The European Arrest Warrant (EAW) is the cornerstone of an extradition treaty between members of the European Union (EU). The EAW allows arrest warrants issued by any EU member country to be executed in any other EU member state for prosecution, detention or imprisonment.

The grounds for appeal against an EAW are very limited. Appeals are allowed based on political motivation and/or the expectation of human rights abuses. EAWs can also be refused if there are criminal proceedings against the person in the executing country, the charge is not a crime in the executing country, the person has already been convicted of the same crime, or the person has not reached the age of criminal responsibility in the executing country.⁴

The Extradition Unit of the Special Crime and Counter Terrorism Division (SCCTD) of the Crown Prosecution Service (CPS) represents foreign authorities as they pursue EAWs

against people in England and Wales, whilst this role is undertaken by the Crown Office and Procurator Fiscal Service in Scotland and the Crown Solicitors Office in Northern Ireland. All EAW cases in England and Wales are heard at Westminster Magistrate's Court; whilst cases in Scotland are heard at the Edinburgh Sheriff Court, and in Northern Ireland at Belfast Magistrates Court.⁵

This report examines EAW requests from and by the UK from 2013 to 2016 inclusive, by country and type of offence.

What is the European Convention on Human Rights (ECHR)

The European Convention on Human Rights (ECHR) came into force in 1953 following a post-World War Two agreement between the key members of the Council of Europe which included: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, the UK, Greece, Turkey, Iceland, and (West) Germany.

The European Court of Human Rights (ECtHR) was established in 1959 to meet the requirements of Article 19 of the ECHR. Since then the Council of Europe has been greatly expanded and now includes 47 countries as signatories to the ECHR, including all 28 EU member states.⁶

The ECHR has 19 articles (plus further articles governing the functioning of the convention) which are enforced by the ECtHR. Applications can be made to the ECtHR by individuals, groups of people, companies or NGOs after all domestic remedies have been exhausted.⁷

A judge is elected to the ECtHR by each member state, meaning there are 47 judges at present. A Chamber formed of seven judges, including one from the country the claim is against, deliver judgements on each case. These judgements become binding after three months if they are not appealed. If these judgements are appealed a Grand Chamber of senior judges hears the case and delivers a binding judgement.⁸

This report examines judgements by the ECtHR from 2014 to 2017 inclusive, focussing on Article 3 (prohibition of torture) and Article 6 (right to a fair trial) as these rights are the most critical to the functioning of justice systems, and therefore to the issue of extradition.

The report examines Council of Europe countries together, including the member states which are not part of the EU. This allows comparisons between the performance of non-EU countries and EU, with revealing insights into the worst human rights violators in the EU both generally and specifically for violations of Article 3 and Article 6 of the convention.

2. European Arrest Warrant: Overall statistics

This section examines the overall number of surrenders by the UK and requests made by the UK under EAWs from 2013 to 2016 inclusive, the latest set of statistics available at the time of writing.

Requests for extradition from the UK

From 2013 to 2016 the UK arrested 7,178 people and surrendered 4,803 people who were subject to EAWs issued by EU member states. Since 2014 figures for EAW requests have included warrants without a UK connection, therefore it is impossible to assess how many requests actually affected people in the UK.

Requests to the UK for extradition from EU member states, 2013-16

	Total	2013	2014	2015	2016
Requests	45,392	5,522	13,460	12,613	13,797
Arrests	7,178	1,775	1,519	2,041	1,843
Surrenders	4,803	1,126	1,097	1,149	1,431

Notes:

These figures are drawn from reports and cases as inputted by Member States. Some categories of information have been omitted by international partners.

The UK joined the Second Generation Schengen Information System (SIS II) on 13 April 2015. Before this date, the Crown Office and Procurator Fiscal for Scotland served as Scotland's central authority for EAWs. Figures after this date are inclusive for all of the UK.

Since 2014 figures for EAW requests have included warrants without a UK connection.

Source: National Crime Agency

Of the 4,803 people the UK surrendered to other EU countries, more than half were extradited to Poland (2,499). The next greatest number of people extradited were surrendered to Lithuania (480), Romania (358), and Latvia (225).

Surrenders by the UK to EU countries due to an EAW, top ten countries, 2013-16

	Total	2013	2014	2015	2016
1 Poland	2,499	686	594	573	646
2 Lithuania	480	69	145	129	137
3 Romania	358	78	51	93	136
4 Latvia	225	56	61	47	61
5 Czech Republic	215	39	43	62	71
6 Germany	150	25	34	32	59
7 Hungary	148	29	19	38	62
8 Ireland	121	29	36	29	27
9 Slovakia	108	23	25	24	36
10 Spain	82	17	19	14	32
Total*	4,803	1,126	1,097	1,149	1,431

** Total is for all requests, not just the top ten requesting countries shown here*

Source: National Crime Agency

The National Crime Agency (NCA) records surrenders by the UK under EAWs in 67 different categories. From 2013 to 2016, the greatest number of people, 484 in total, were surrendered for theft under the value of £100,000; followed by 402 for fraud under the value of £100,000; 393 for robbery; 350 for theft, and; 331 for 'other' offences.

Surrenders by the UK to EU countries due to an EAW, top ten offences, 2013-16

		Total	2013	2014	2015	2016
1	Theft - under £100,000	484	4	105	171	204
2	Fraud - under £100,000	402	2	69	152	179
3	Robbery	393	94	95	99	105
4	Theft	350	253	92	5	
5	Other	331	175	96	40	20
6	Grievous Bodily Harm	301	138	95	35	33
7	Drugs Trafficking	278	105	75	44	54
8	Fraud	262	188	61	13	
9	Drugs Offences	255		49	90	116
	Assault Occasioning Actual					
10	Bodily Harm	252	3	75	77	97
	Total*	4,803	1,126	1,097	1,149	1,431

** Total is for all requests, not just the top ten primary offences shown here*

Source: National Crime Agency

Requests for extradition to the UK

From 2013 to 2016 the UK made a total of 1,024 requests for extradition to the UK, with these requests resulting in 661 arrests in EU member states. Of the 1,024 extraditions sought, just 551 people were actually surrendered.

Requests by the UK for extradition from EU member states, 2013-16

	Total	2013	2014	2015	2016
Requests	1,024	219	228	228	349
Arrests	661	170	156	150	185
Surrenders	551	127	145	123	156

Notes:

These figures are drawn from reports and cases as inputted by Member States. Some categories of information have been omitted by international partners.

The UK joined the Second Generation Schengen Information System (SIS II) on 13 April 2015. Before this date, the Crown Office and Procurator Fiscal for Scotland served as Scotland's central authority for EAWs. Figures after this date are inclusive for all of the UK.

Source: National Crime Agency

3. The worst human rights abusers in the Council of Europe

The EU member states among the top ten worst violators of the ECHR from 2014 to 2017 are: Romania, Greece, Hungary, Bulgaria, Italy and Croatia. The non-EU states making the top ten worst violators are Russia, Turkey, Ukraine and Serbia.

By far the worst human rights violator from 2014 to 2017 was Russia, with 746 judgements against it, followed by Turkey, with 349 judgements against it.

The third worst country for human rights violations from 2014 to 2017 was Romania, an EU member state. The ECtHR found human rights violations in 272 cases in Romania, over a hundred more violations than the next worst EU member state.

The UK ranked 30th for total number of human rights violations from 2014 to 2017, with 17 ECtHR judgements against it. This compares favourably with the average number of violations among the 47 Council of Europe members, which was 67.8 adverse judgements.

Top ten human rights violators compared with the UK, by ECtHR judgements finding at least one violation of the ECHR, 2014-17

	Total	2014	2015	2016	2017
1 Russian Federation	746	122	109	222	293
2 Turkey	349	94	79	77	99
3 <i>Romania</i>	272	74	72	71	55
4 Ukraine	241	39	50	70	82
5 <i>Greece</i>	170	50	43	41	36
6 <i>Hungary</i>	151	49	42	40	20
7 <i>Bulgaria</i>	110	18	28	33	31
8 <i>Italy</i>	98	39	21	10	28
9 <i>Croatia</i>	84	23	17	25	19
10 Serbia	76	16	16	19	25
Total*	3187	756	694	829	908
Average*	67.8	16.1	14.8	17.6	19.3
30 <i>United Kingdom</i>	17	4	4	7	2

**** Total and average are for all Council of Europe states, not just the worst violators shown here.***

Notes:

Includes violations of any ECHR article.

EU countries in italics.

Average = mean number.

Source: Council of Europe, Violations by Article and by State, 2014-2017

4. Article 3: Prohibition of torture

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”⁹

In prohibiting torture as well as inhuman or degrading treatment or punishment, Article 3 of the ECHR applies primarily to detention and prison conditions. The ECtHR consistently ranks Article 3, along with Article 2 (the right to life) as one of the most fundamental rights.¹⁰

The majority of violations of Article 3 occur in the context of detention¹¹, which makes persistent violations of these rights by certain states of particular concern in the context of extradition and the EAW.

Violations of Article 3, as determined by the ECtHR, are reported in four categories:

- Prohibition of torture
- Inhuman or degrading treatment
- Lack of effective investigation
- Conditional violations.

Article 3: Total violations

Overall, the worst violator of Article 3 rights was Russia, with 370 judgements against it between 2014 and 2017. This was followed by Romania, with 143 judgements against it. The next worst violator of Article 3 rights among EU countries was Greece, ranked fifth with 59 violations.

The average number of Article 3 violations per country was 22.4, and in this period the UK, alongside 14 other countries, had no judgements against it under Article 3.

Top ten Article 3 violators compared with the UK, by ECtHR judgements, 2014-17

	Total	2014	2015	2016	2017
1 Russian Federation	370	71	76	80	143
2 <i>Romania</i>	143	34	40	40	29
3 Ukraine	106	17	33	37	19
4 Turkey	78	28	27	19	4
5 <i>Greece</i>	59	20	12	19	8
6 <i>Bulgaria</i>	44	13	16	8	7
7 Republic of Moldova	33	8	7	14	4
8 <i>Italy</i>	26	8	3	4	11
9 <i>Poland</i>	26	8	3	11	4
10 <i>Hungary</i>	19	1	6	7	5
Total*	1054	248	267	278	261
Average*	22.4	5.3	5.7	5.9	5.6
United Kingdom	0	0	0	0	0

** Total and average are for all Council of Europe states, not just the worst violators shown here.*

Notes:

Includes violations of any ECHR article.

EU countries in italics.

Average = mean number.

Source: Council of Europe, Violations by Article and by State, 2014-2017

Prohibition of torture

In the years 2014 to 2017 the ECtHR found a total of 29 violations of the ECHR due to instances of torture. Russia was the greatest violator, with 13 judgements against it over four years, followed by Italy with five and Ukraine with three judgements against it.

Violations of Article 3 of the ECHR, prohibition of torture, 2014-17

	Total	2014	2015	2016	2017
Russian Federation	13	1	4		8
<i>Italy</i>	5		1		4
Ukraine	3		1	2	
Turkey	2		2		
<i>Poland</i>	2	2			
<i>Bulgaria</i>	1		1		
The former Yugoslav Republic of Macedonia	1		1		
Republic of Moldova	1	1			
Georgia	1				1
Total	29	4	10	2	13

Note: *EU countries in italics.*

Source: *Council of Europe, Violations by Article and by State, 2014-2017*

Case Study 1: Cirino and Renne vs. Italy¹²

Mr Cirino and Mr Renne were detained in the Asti Correctional Facility in Italy. After an altercation between Mr Cirino and a prison officer, in which Mr Renne intervened, both were moved to separate cells in solitary confinement. During the time they spent in solitary confinement they were stripped naked for several days, had beds without mattresses, blankets, sheets or covers, and were kept in cells without sinks and with missing window panes – all in a cold December. Both were also subjected to rationing of food and water, some days receiving no food at all. They were beaten daily by groups of prison officers, both during the day and at night.

The domestic court found that this conduct amounted to actual bodily harm, but that the statute of limitations had expired. The court also decided that the conduct could amount to torture, but Italy had not incorporated this as an offence under domestic law.

The ECtHR Chamber judged that the seriousness, organised and premeditated nature of the treatment amounted to torture, a violation of Article 3 of the ECHR. The Chamber also concluded that there had been a procedural violation of Article 3 in that Italian law was deficient.

Inhuman or degrading treatment

Of the four Article 3 violation categories, inhuman or degrading treatment is consistently the category with the most violations. In the years 2014 to 2017 there were a total of 707 ECtHR judgements finding violations for inhuman or degrading treatment, with most of them occurring in a detention setting.

Again, Russia was the greatest violator, with 265 judgements against it from 2014 to 2017. This was followed by Romania with 104, Ukraine with 65, and Greece with 57.

Violations of Article 3 of the ECHR, inhuman or degrading treatment, the ten worst violators, 2014-17

	Total	2014	2015	2016	2017
Russian Federation	265	50	44	64	107
<i>Romania</i>	<i>104</i>	<i>29</i>	<i>27</i>	<i>28</i>	<i>20</i>
Ukraine	65	12	19	21	13
<i>Greece</i>	<i>57</i>	<i>20</i>	<i>12</i>	<i>17</i>	<i>8</i>
Turkey	37	15	11	9	2
<i>Bulgaria</i>	<i>30</i>	<i>7</i>	<i>10</i>	<i>6</i>	<i>7</i>
Republic of Moldova	22	4	5	10	3
<i>Poland</i>	<i>21</i>	<i>4</i>	<i>2</i>	<i>11</i>	<i>4</i>
<i>Hungary</i>	<i>17</i>	<i>1</i>	<i>6</i>	<i>7</i>	<i>3</i>
<i>Slovenia</i>	<i>15</i>	<i>13</i>	<i>2</i>		
Total*	707	174	157	194	182

* Totals are for all Council of Europe states, not just the worst violators shown here.

Note: EU countries in italics.

Source: Council of Europe, *Violations by Article and by State, 2014-2017*

Case Study 2: Various vs. Romania

Romania has been censured by the ECtHR repeatedly for similar violations of Article 3 for inhuman or degrading treatment with regards to prison conditions. These cases are a small sample of the judgements against Romania.

In **Eze vs. Romania** the ECtHR found that conditions in Rahova Prison amounted to a violation of Article 3. The applicant had complained of over-crowded conditions, as he had been forced to share a cell with nine other inmates and, excluding furniture, there was only half a square metre of living space per person. He had also complained of being detained with people who suffered serious medical and psychological conditions which impacted on his safety. The inmates shared two showers with hot water for just 90 minutes twice per week, and during the summer running water was only available for six hours per day, and not at all at night – including there being no water for the toilet. The ECtHR upheld these claims and ruled that there had been a violation of Article 3.¹³

In **Bordenciu vs. Romania** the applicant claimed that he was held in cells with 35-40 other prisoners at Târgu Jiu Prison, and that at this prison conditions were unbearably poor. There was no natural light or ventilation, the cells were full of bed bugs, and the quality of food was parlous. The ECtHR judged that the over-crowded conditions amounted to a violation of Article 3, and that it did not need to examine the applicant's other claims.¹⁴

In **Apostu vs. Romania** the applicant complained about the conditions he was subjected to at Cluj police station, Gherla Prison, and Rahova Prison. At Cluj police station the applicant asserted that not only was the cell incredibly small, and access to a toilet was limited as it was down a corridor, but that the smell of sewerage was noxious. At Gherla Prison the applicant claimed that cells were overcrowded, cold and that hygiene was extremely poor. At Rahova Prison the applicant again argued that cells were overcrowded and cold, and that he had nothing to eat for three days as other detainees had thrown his food elsewhere. The ECtHR judged that the applicant's claims were true, and that these conditions amounted to a violation of Article 3.¹⁵

In **Todireasa vs. Romania** the applicant claimed that detention conditions in five different prisons violated his human rights. Cells were overcrowded, did not have heating during the winter, and were unhygienic. In one prison the toilet had no window panes, and in another it had no door for privacy. In two of the prisons there was no shower. In two of the prisons there were infestations of bed bugs and other parasites, and the applicant claimed he could not sleep because of bed bugs falling from the bunk above him. There was also insufficient day light, electricity for only a few hours during the day and evening, dirty mattresses and sheets, and very poor quality food. In this case the ECtHR found a violation of Article 3 of the convention.¹⁶

Lack of effective investigation

In the years 2014 to 2017 the ECtHR found a total of 271 violations of Article 3 of the convention for lack of effective investigation. The worst violator was Russia with 64 judgements against it, followed by Romania and Turkey both with 39, and Ukraine with 38.

Violations of Article 3 of the ECHR, lack of effective investigation, the ten worst violators, 2014-17

	Total	2014	2015	2016	2017
Russian Federation	64	9	20	13	22
<i>Romania</i>	39	5	13	12	9
Turkey	39	13	14	10	2
Ukraine	38	5	13	14	6
<i>Bulgaria</i>	12	5	5	2	
<i>Italy</i>	11	2	1	2	6
Republic of Moldova	10	3	2	4	1
Azerbaijan	9	2	4	3	
<i>Latvia</i>	6	3		2	1
<i>Lithuania</i>	5			3	2
Total*	272	55	88	71	58

** Totals are for all Council of Europe states, not just the worst violators shown here.*

Note: EU countries in italics.

Source: Council of Europe, Violations by Article and by State, 2014-2017

Case Study 3: Hristov vs. Bulgaria and Kostadinov vs. Bulgaria

In **Hristov vs. Bulgaria** the applicant claimed that the police had failed to properly investigate, identify and prosecute the perpetrators of a violent crime against himself and his son. He also argued that the long (13 year) delay was deliberate, in order for the offence to become time-barred and redress to be impossible. The ECtHR found that the state had failed to carry out a prompt investigation, and that together with the time-barred nature of the offence this amounted to a violation of Article 3.¹⁷

In **Kostadinov vs. Bulgaria** the applicant claimed that following a Gay Pride event in Sofia he was arrested, kept in overcrowded conditions, not given any food or drink, not allowed to go to the toilet, and beaten repeatedly. Mr Kostadinov filed a claim with the Prosecutor's Office, which after a preliminary enquiry refused to open criminal proceedings. After appeals to the Prosecutor's Office and the Supreme Cassation Prosecutor's Office this decision was upheld. The ECtHR judged that there had been violations of Article 3 in three ways: the force used during the arrest, the detention conditions, and the lack of effective investigation afterwards.¹⁸

Conditional violations

Conditional violations are described as: "Cases in which the Court held there would be a violation of Article 3 if the applicant was removed to a State where he/she was at risk of ill-treatment."¹⁹

The ECtHR found a total of 46 of these types of violations from 2014 to 2017. The worst violator was Russia with 28 judgements against it, followed by France with six, and Switzerland with four.

Violations of Article 3 of the ECHR, conditional violations, 2014-17

	Total	2014	2015	2016	2017
Russian Federation	28	11	8	3	6
<i>France</i>	6	1	3	2	
Switzerland	4	2			2
<i>Sweden</i>	3			3	
<i>Belgium</i>	3		1	2	
<i>Bulgaria</i>	1	1			
<i>Greece</i>	1			1	
Total	46	15	12	11	8

Note: EU countries in italics.

Source: Council of Europe, *Violations by Article and by State, 2014-2017*

Case Study 4: Paposhvili vs. Belgium²⁰

When Mr Paposhvili, a Georgian national who had been convicted of several crimes, was in prison the Belgian Minister for the Interior issued an order for his deportation on the completion of his sentence. Due to the applicant's ill health, this order was not executed upon his release, and instead the time-limit for its enforcement was extended multiple times.

The Grand Chamber of the ECtHR found that neither the Aliens Office or the Aliens Appeals Board had considered Mr Paposhvili's serious ill health – he was suffering from leukaemia with a prognosis of death within six months without the specialist care he was receiving in Belgium – and that to deport him without assessing the impact of deportation on his health would be a violation of Article 3.

5. Article 6: Right to a fair trial

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

“3. Everyone charged with a criminal offence has the following minimum rights:

“a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

“b. to have adequate time and facilities for the preparation of his defence;

“c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

“d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

“e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”²¹

It is expected that all EU member states guarantee the right to a fair trial, and on this basis the EAW assumes parity between the quality of the justice systems of member states. This section analyses whether this assumption of parity bears out, and finds that it does not.

Violations of Article 6 found by the ECtHR are reported in three categories:

- Right to a fair trial
- Length of proceedings
- Non-enforcement.

Article 6: Total violations

Of the 1,315 cases in which the ECtHR found a violation of Article 6 from 2014 to 2017, 240 of the judgements were against Russia. Russia was followed by Turkey with 142, Ukraine with 121, Romania (the worst performing EU country) with 95, and Greece with 91.

The average number of Article 6 judgements across the 47 Council of Europe member states was 27.9, and again the UK was significantly below the average with five Article 6 judgements against it during this period, ranking it 30th out of 47. Just five countries out of the 47 – Andorra, Denmark, Iceland, Ireland and San Marino – had no Article 6 judgements against them from 2014 to 2017²².

Top ten Article 6 violators compared with the UK, by ECtHR judgements, 2014-17

		Total	2014	2015	2016	2017
1	Russian Federation	240	38	33	69	100
2	Turkey	142	42	29	15	56
3	Ukraine	121	13	18	31	59
4	<i>Romania</i>	95	27	25	25	18
5	<i>Greece</i>	91	28	26	19	18
6	<i>Hungary</i>	76	32	22	19	3
7	Serbia	64	10	16	16	22
8	<i>Portugal</i>	47	16	10	16	5
9	<i>Italy</i>	37	22	2	3	10
10	<i>Croatia</i>	32	10	5	9	8
	Total	1315	313	280	322	400
	Average	27.9	6.7	5.9	6.9	8.5
30	<i>United Kingdom</i>	5	0	1	3	1

* *Total and average are for all Council of Europe states, not just the worst violators shown here.*

Notes:

Includes violations of any ECHR article.

EU countries in italics.

Average = mean number.

Source: Council of Europe, Violations by Article and by State, 2014-2017

Right to a fair trial

In 2014 to 2017 there were a total of 663 ECtHR judgements finding a violation of the right to a fair trial. As with the Article 3 violations explained above, Russia was the worst offender with 143 violations in the four year period. This was followed by Turkey with 108 violations, Romania with 58, and Ukraine with 52.

Violations of Article 6 of the ECHR, right to a fair trial, the ten worst violators, 2014-17

	Total	2014	2015	2016	2017
Russian Federation	143	24	19	41	59
Turkey	108	31	20	11	46
<i>Romania</i>	<i>58</i>	<i>18</i>	<i>13</i>	<i>16</i>	<i>11</i>
Ukraine	52	4	13	15	20
Azerbaijan	28	4	2	6	16
<i>Croatia</i>	<i>26</i>	<i>8</i>	<i>5</i>	<i>6</i>	<i>7</i>
<i>Italy</i>	<i>26</i>	<i>17</i>	<i>1</i>	<i>2</i>	<i>6</i>
<i>Bulgaria</i>	<i>20</i>	<i>2</i>	<i>5</i>	<i>9</i>	<i>4</i>
Armenia	17		5	10	2
Republic of Moldova	16	5	2	6	3
Total*	663	149	131	176	207

* *Totals are for all Council of Europe states, not just the worst violators shown here.*

Note: EU countries in italics.

Source: Council of Europe, Violations by Article and by State, 2014-2017

Case Study 5: Caraian vs. Romania and Beraru vs. Romania

In **Caraian vs. Romania** the applicant claimed that the presumption of innocence had not been granted to him. During the pre-trial stage of a bribery, fraud and forgery case against him prosecuting authorities terminated the case as the offences were time-barred. Nevertheless, the court – and subsequent appeal courts – declared that he was guilty of the offences. The ECtHR found that this declaration of guilt by the domestic courts without a trial was a violation of Article 6:2 (presumption of innocence).²³

In **Beraru vs. Romania** the applicant, an Israeli national, complained that the trial against him for bribery, of which he was convicted, was not fair. The substance of his claim was that five months after the start of the trial a second judge had supplemented the first judge, and that the second judge went on to deliberate and sign the judgement without having heard the previous five months of evidence in person. He also asserted that the courts had not disclosed all the evidence against him in advance, had not ensured his lawyers had proper access to the file in order to prepare a defence, that the rules for the taking of evidence had not been followed, and that the taking of evidence in court had not been adversarial. The ECtHR held that there had been a violation of Article 6 of the convention, on points 6:1, 6:3b, 6:3c and 6:3d.²⁴

Length of proceedings

Violations of Article 6 of the ECHR due to length of proceedings totalled 454 in 2014 to 2017. The worst violator was Greece, with 76 ECtHR judgements against it, followed by Hungary with 69, and Ukraine with 56.

Violations of Article 6 of the ECHR, length of proceedings, the ten worst violators, 2014-17

	Total	2014	2015	2016	2017
<i>Greece</i>	76	26	20	16	14
<i>Hungary</i>	69	30	21	16	2
<i>Ukraine</i>	56	1	5	13	37
<i>Portugal</i>	31	10	9	8	4
<i>Turkey</i>	31	11	8	4	8
<i>Russian Federation</i>	30	3	6	15	6
<i>Romania</i>	27	6	7	8	6
<i>Austria</i>	20	3	2	4	11
<i>Poland</i>	14	4	9	1	
<i>Slovenia</i>	14	7	6		1
Total*	454	117	104	106	127

** Totals are for all Council of Europe states, not just the worst violators shown here.*

Note: EU countries in italics.

Source: Council of Europe, Violations by Article and by State, 2014-2017

Case Study 6: Sismanidis and Sitaridis vs. Greece²⁵

In this case, the applicants had been acquitted of charges of smuggling, with those judgements becoming final. Nevertheless, the Greek authorities attempted to impose fines as well as additional customs duties on each applicant. The applicants claimed that in ignoring the acquittal by the criminal courts, the administrative courts had violated their right to the presumption of innocence as well as the right not to be punished twice for the same crime. In the case of Mr Sitaridis the ECtHR found a violation of Article 6:2, and in the case of Mr Sismanidis, the ECtHR found a violation of Article 4 of Protocol No. 7. Mr Sitaridis' claim under Article 4 of Protocol No. 7 and Mr Sismanidis' claim under Article 6:2 were both denied as domestic remedies had not been exhausted.

In the case of Mr Sitaridis the ECtHR also found a violation of Article 6:1 for length of the proceedings. It found that six years and ten months, across two levels of jurisdiction, was too long for a case that was not especially complex.

Non-enforcement

The most violations for non-enforcement of Article 6 of the ECHR were by Russia, at 67. This was followed by Serbia with 46, Albania with 16, Ukraine with 13, and Romania with 10. From 2014 to 2017 the ECtHR found a total of 198 violations.

Violations of Article 6 of the ECHR, non-enforcement, the ten worst violators, 2014-17

	Total	2014	2015	2016	2017
Russian Federation	67	11	8	13	35
Serbia	46	9	15	9	13
Albania	16	2	5	9	
Ukraine	13	8		3	2
<i>Romania</i>	<i>10</i>	<i>3</i>	<i>5</i>	<i>1</i>	<i>1</i>
Bosnia Herzegovina	8	3	1		4
Republic of Moldova	6	3	3		
<i>Bulgaria</i>	<i>5</i>		<i>3</i>	<i>1</i>	<i>1</i>
<i>Italy</i>	<i>5</i>	<i>3</i>	<i>1</i>		<i>1</i>
<i>Portugal</i>	<i>5</i>	<i>3</i>		<i>1</i>	<i>1</i>
Total*	198	47	45	40	66

** Totals are for all Council of Europe states, not just the worst violators shown here.*

Note: EU countries in italics.

Source: Council of Europe, Violations by Article and by State, 2014-2017

Case Study 7: Bogdan Vodă Greek-Catholic Parish vs. Romania²⁶

In this case the Bogdan Vodă Greek-Catholic Parish claimed that a judgement in its favour had not been enforced. This judgement by a Romanian court had concluded that the Orthodox Parish in Bogdan Vodă must allow the Greek-Catholic Parish to conduct religious services in one of the Churches belonging to it. This was because the Church in question had belonged to the Greek-Catholic Parish until the Church was forcibly abolished in 1948.

The Bogdan Vodă Greek-Catholic Parish went on to secure an enforcement order but since then its attempts, via bailiffs, to carry out the judgement had been prevented by violent protests by Orthodox villagers. The Greek-Catholic Parish sought assistance from the local prosecutor's office to enforce the judgement, but its claim went unanswered. The ECtHR concluded that although the authorities were equipped to enforce the judgement, they did not act diligently and in good time to assist the applicant, and therefore there was a violation of Article 6:1.

6. Countries of concern

This section examines which countries are of the most concern in terms of human rights violations, vulnerabilities under the EAW, and numbers of extraditions from the UK.

Greece

Though the UK did not extradite many people to Greece in the period 2013 to 2016 – just nine people in total – this country is of concern because it had the fifth most ECtHR judgements against it in the Council of Europe from 2014 to 2017, and was the second worst violator of human rights in the EU.

Surrenders by the UK to Greece due to an EAW, by offence, 2013-16

		Total	2013	2014	2015	2016
1	Money Laundering	3	1	2		
2	Assault Occasioning Actual Bodily Harm	1				1
3	Child Sex Offences	1				1
4	Fraud - over £100,000	1				1
5	Immigration & Human Trafficking	1				1
6	Murder/Manslaughter	1		1		
7	Theft - under £100,000	1				1
	Total	9	1	3		5

Source: National Crime Agency

Of the 150 total violations the ECtHR found against Greece, 57 of them were for inhuman or degrading treatment, 76 were due to unreasonable length of proceedings, and 11 were for violations of the right to a fair trial.

Violations of Article 3 and Article 6 of the ECHR, Greece, 2014-17

	Total	2014	2015	2016	2017
Prohibition of torture	0				
Inhuman or degrading treatment	57	20	12	17	8
Lack of effective investigation	1			1	
Conditional violations	1			1	
Right to a fair trial	11	1	5	2	3
Length of proceedings	76	26	20	16	14
Non-enforcement	4	1	1	1	1
Total	150	48	38	38	26

Source: Council of Europe, Violations by Article and by State, 2014-2017

Perhaps the most famous and shocking of EAW cases involving a UK citizen is that of Andrew Symeou, who was extradited to Greece. After being arrested in the UK under an EAW and extradited to Greece, Symeou spent more than 10 months in horrendous prison conditions and then had to remain in Greece to await trial for murder. When the trial eventually began, Symeou was cleared of the charge as CCTV evidence clearly showed he was somewhere else at the time the crime was committed.²⁷

Poland

Overall, Poland was the 11th worst violator of human rights in the Council of Europe from 2014 to 2017 with a total of 73 violations. During this period 46 of the 73 violations were under Article 3 or Article 6 of the ECHR, including 21 cases of inhuman or degrading treatment and 16 cases where the length of proceedings were found to violate human rights.

Poland was one of only three countries that was found by the ECtHR from 2014 to 2017 to have used torture, and with two judgements against it was the worst violator in this category (there was one judgement against Russia and one against Moldova).

Violations of Article 3 and Article 6 of the ECHR, Poland, 2014-17

	Total	2014	2015	2016	2017
Prohibition of torture	2	2			
Inhuman or degrading treatment	21	4	2	11	4
Lack of effective investigation	3	2	1		
Conditional violations	0				
Right to a fair trial	3	2	1		
Length of proceedings	16	4	9	1	2
Non-enforcement	1		1		
Total	46	14	14	12	6

Source: Council of Europe, Violations by Article and by State, 2014-2017

However, these historic statistics do not tell the full story about Poland's trustworthiness in terms of its justice system. The country's recent reforms have sparked concern across the EU that there is growing political interference in the justice system²⁸. And in March 2018, an Irish High Court judge refused an extradition request to Poland on the grounds that these justice reforms had systematically damaged the rule of law²⁹.

These developments should be of concern in the UK as the greatest number of surrenders by the UK under the EAW system are to Poland. The number of people extradited from the UK to Poland from 2013 to 2016 was 2,499, almost five times as many as the next country.

Surrenders by the UK to Poland due to an EAW, top ten offences, 2013-16

	Total	2013	2014	2015	2016
1 Robbery	230	59	50	63	58
2 Theft - under £100,000	224	3	56	80	85
3 Other	222	125	68	20	9
4 Fraud - under £100,000	218	1	32	85	100
5 Theft	210	151	55	4	
6 Grievous Bodily Harm	199	93	60	24	22
7 Fraud	168	126	36	6	
8 Drugs Trafficking	152	69	44	16	23
9 Assault Occasioning Actual Bodily Harm	144	2	46	48	48
10 Drugs Offences	137		32	49	56
Total*	2,499	686	594	573	646

** Totals are for all offences, not just the ten most common shown here.*

Source: National Crime Agency

Romania

Romania is by far the worst violator of human rights in the EU. With a total of 272 violations of human rights found by the ECtHR from 2014 to 2017, Romania had over 100 more judgements against it than the next worst country in the EU. The vast majority of these violations were under Article 3 and Article 6 of the ECHR (238 of the 272). In terms of inhuman or degrading treatment, Romania ranks consistently behind only Russia in the Council of Europe. For violating the right to a fair trial the only worst offenders among the 47 Council of Europe members are Russia and Turkey.

Of the 104 violations found in Romania by the ECtHR for inhuman or degrading treatment, the vast majority occurred in detention. The ECtHR has consistently found that Romanian prisons are overcrowded, with space far below the legally required minimum per person. Case after case has brought disgusting prison conditions to light; with infestations of bed bugs and vermin, inadequate washing facilities for prisoners, and cold, damp, dirty cells the norm. Though the ECtHR has censured Romania for these violations over successive years, the country has not taken sufficient action to bring its prisons up to standard and so violations continue unabated.

Violations of Article 3 and Article 6 of the ECHR, Romania, 2014-17

	Total	2014	2015	2016	2017
Prohibition of torture	0				
Inhuman or degrading treatment	104	29	27	28	20
Lack of effective investigation	39	5	13	12	9
Conditional violations	0				
Right to a fair trial	58	18	13	16	11
Length of proceedings	27	6	7	8	6
Non-enforcement	10	3	5	1	1
Total	238	61	65	65	47

Source: Council of Europe, Violations by Article and by State, 2014-2017

Nevertheless, extraditions from the UK to Romania continue, with 358 surrenders between 2013 and 2016. The UK surrendered the third largest number of people to Romania during this period, behind only Poland and Lithuania.

Surrenders by the UK to Romania due to an EAW, top ten offences, 2013-16

	Total	2013	2014	2015	2016
1 Theft - under £100,000	46		8	17	21
2 Theft	32	26	6		
3 Other	27	11	5	7	4
4 Fraud - under £100,000	26		4	9	13
5 Robbery	25	7	4	5	9
6 Driving Whilst Disqualified	22		2	7	13
7 Burglary	21		4	8	9
8 Immigration & Human Trafficking	19	11	2	3	3
9 Assault Occasioning Actual Bodily Harm	14		3	4	7
10 Grievous Bodily Harm	10	7	3		
Total*	358	78	51	93	136

** Totals are for all offences, not just the ten most common shown here.*

Source: National Crime Agency

7. Recommendations

In light of the evidence, this report concludes with the following recommendations.

- As a matter of urgency, the British political and legal establishment need to deal with the harsh disparities in justice and human rights that now exist between different member states of the EU.
- As part of the Brexit process, the UK should halt extraditions to the EU's leading human rights and due process abusers; top of the list being Romania, followed by Greece. It should also carefully consider stopping extraditions to Poland, in light of its poor human rights record and the developing political and judicial situation. Already, the Irish High Court has recently refused extraditions to Poland on the grounds that there is grave political interference in the appointment and workings of Polish judges. The High Court of Justice should now follow by considering a similarly urgent stance both against Romania, Greece and Poland.
- Given the scale, depth and breadth of the abuses of human rights and due process by some EU member states the British Home Secretary, the Rt. Hon. Sajid Javid MP, should proactively use key mechanisms at his disposal, such as Humanitarian Protection, to halt the extradition of people to those EU countries which not only regularly violate human rights and due process, but which repeatedly renege on their assurances to British courts. Top of this list comes Romania.
- The UK government should use Brexit negotiations as a platform to redesign the EAW system and therein free up British judges to act as a bulwark against abuses of due process and human rights in key parts of Europe. This should include the right of British judges to evaluate whether there is a *prima facie* case to warrant a trial and extradition in the first place. If British judges remain precluded from evaluating evidence and the *prima facie* case, then this is not only a disaster for British justice but it amounts to a missed opportunity. For it denies the very real contribution that British justice can make in incentivising and improving the due process and human rights practices of several continental countries who deserve better.
- Given heightened levels of international lawfare, and information warfare, it is important that the British Prime Minister, Home Secretary and High Court understand the urgent national security implications of such reforms. For if swift action is not taken to reform the EAW system, then the UK and its allies in NATO and the EU will increasingly be left open to a plethora of failing legal systems in key parts of Central and Eastern Europe that could all too easily benefit those with more authoritarian political motivations, including Putin's Russia.

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