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Overuse of the European Arrest Warrant – a threat to human rights

Strasbourg, 15.03.2011 - The request made by Sweden to the United Kingdom for the surrender of the founder of Wikileaks, Julian Assange, put the European Arrest Warrant (EAW) in the headlines, says the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in his latest [Human Rights Comment](#) published today

The EAW was created in 2002 as a response to the risk of further terrorist actions after the September 2001 attacks in the United States.

This “fast-track extradition scheme” aims to facilitate the surrender of a person from one member state of the European Union to another to face trial or serve a prison sentence. Based on the principle of mutual trust, it was intended to reinforce the fight against serious cross-border crimes.

There are certainly strong arguments for such a system in order to avoid impunity when persons suspected of organised crime abscond to another country. There has, however, been repeated criticism of the manner in which the EAW has functioned in a number of concrete cases.

This criticism must be taken seriously. Human rights organisations have expressed concerns about the imprisonment of innocent persons, disproportionate arrests, violations of procedural rights and the impossibility in some countries for an innocent person to appeal against a decision to be surrendered. The problems appear to have worsened with the increase of the number of EAWs – there are now an average of more than one thousand per month, the overwhelming majority of which relate to minor crimes.

Abuses and excesses of the system

The non-governmental organisation [Fair Trials International](#) has documented several cases in which human rights violations resulted from the procedures. Some of these cases are now pending before the European Court of Human Rights in Strasbourg.

The main problems which have been identified relate to: the absence of an effective remedy against a decision to extradite an individual subject to an EAW; the considerable lapse of time between the date of the alleged offence and the issuance of an EAW; and the impossibility for individuals in some countries to have an EAW against them cancelled– even when their innocence has been established or a member state has decided not to surrender them.

Sometimes problems are linked to the way evidence is obtained or investigations are conducted in the requesting state. A British student, for example, was served with an EAW one year after he returned from a holiday in Greece. He then learned that he was wanted for murder in Greece, on the basis of testimony allegedly obtained through police interrogation tainted by brutality. The UK surrendered him to Greece in July 2009, where he was detained before being released on bail.

The EAW might also be used to send individuals to countries where they have to serve a prison sentence resulting from an unfair trial, as shown in the case of an England football fan who was given a two-year prison sentence for his alleged role in football-related violence in Portugal during the Euro 2004 tournament. He was surrendered from the UK to Portugal in May 2010 to serve his sentence, although he claimed that he did not have a fair

trial in Portugal due to the lack of time to prepare a defence and poor interpretation during the trial.

Need to reinforce safeguards

There is a need to strengthen the human rights safeguards in EAW procedures. The adoption in 2010 of an EU [directive on the right to interpretation and translation in criminal proceedings](#) represents a step in the right direction. The EU's Stockholm programme envisaged another look at the EAW in order to make proposals, where appropriate, "to increase efficiency and legal protection for individuals in the process of surrender". This review is urgently needed.

The EAW has been used in cases for which it was not intended, sometimes with harsh consequences on the lives of the persons concerned. It is thus high time to reform a system that affects thousands of persons every year.

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The Commissioner for Human Rights is an independent, non-judicial institution within the Council of Europe, mandated to promote awareness of, and respect for, human rights in the 47 member states of the Organisation.

Elected by the Parliamentary Assembly of the Council of Europe, the present Commissioner, Mr Thomas Hammarberg, took up his function on 1 April 2006