



INSIGHT

## *MINISTER FOR JUSTICE V. O'CONNOR:* A DECISIVE MOMENT FOR THE FUTURE OF THE EAW IN THE UK

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ABSTRACT: The Irish Supreme Court (IESC) decided to lodge a request for a preliminary ruling with the CJEU in *Minister for Justice v. O'Connor* on February 1<sup>st</sup>. The IESC enquired the CJEU about the possibility of surrendering individuals to the UK who will be imprisoned beyond the date on which this country will withdraw from the EU. The doubts arise, in this case, due to the uncertainty surrounding the legal framework applicable after this date. This preliminary ruling could have important ramifications for the functioning of the European Arrest Warrant (EAW) in a post-Brexit scenario and until a bilateral agreement between the EU and the UK is concluded. The goal of this *Insight* is to analyse some of these implications, especially in connection with the protection of fundamental rights amid the uncertainty concerning the guarantees applicable after Brexit, and to examine impact of this case within the wider EAW scheme.

KEYWORDS: Framework Decision 2002/584/JHA – Brexit – EAW – criminal law – AFSJ – Court of Justice.

### I. THE FACTS OF THE CASE

The Irish Supreme Court (IESC) in *Minister for Justice v. O'Connor* had to review the European Arrest Warrant (EAW) request issued by the UK against Thomas Joseph O'Connor, a construction manager wanted by the UK for an offence of “conspiracy to cheat the public revenue”.<sup>1</sup> Mr O'Connor was sentenced to four and a half years imprisonment by the Blackfriars Crown Court in London in January 2007 for this crime and, while on bail, he decided to flee to Ireland. The surrender of Mr O'Connor is also sought in connection with this breach of the bail conditions given that, if surrendered to the UK, he is likely to “face prosecution for an allegation of absconding while on bail”.<sup>2</sup>

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<sup>1</sup> Irish Supreme Court, judgment of 1 February 2018, *Minister for Justice v. O'Connor*, para. 5.7.

<sup>2</sup> *Ibid.*, para. 5.8.

Mr O'Connor was arrested in Ireland on the basis on an EAW issued by the UK in 2014 and the Irish High Court (IHC) granted the surrender on 27 July 2017.<sup>3</sup> However, Mr O'Connor was granted a leave to appeal to the Supreme Court based on what the IESC describes as the "Brexit point", which refers to the implications of Brexit on the execution of an EAW issued by the UK to serve a sentence that will extend beyond the date the UK withdraws from the EU.<sup>4</sup>

In this judgment, the IESC refers to the sentence already imposed to Mr O'Connor in connection with tax fraud charges, as well as the possible sentence that he could face once surrendered to the UK for absconding bail conditions. Whether he is found guilty of these additional charges or not, it is very likely that Mr O'Connor "will continue to be imprisoned in the United Kingdom beyond the 29<sup>th</sup> March, 2019, when the United Kingdom will withdraw from the European Union".<sup>5</sup> This generates serious uncertainty about whether some fundamental rights protections will be applicable to Mr O'Connor and others facing similar situations who are facing imprisonment beyond the withdrawal date.

## II. THE "BREXIT POINT"

As it has been previously explained, the main concern of the IESC arises in relation with the ambiguous legal framework applicable to Mr O'Connor once the UK withdraws from the EU in March 2019. In other words, the surrender to the UK in 2018 should be based on EU law, and granted on the basis that the fundamental rights safeguards established by EU law that should apply to Mr O'Connor during his time in the UK.<sup>6</sup> But as of today, the legal framework that will govern most of his time in prison is unknown and will very likely be based on UK domestic law.<sup>7</sup> A particularly problematic issue to which the IESC refers to is the fact that some of the rights that Mr O'Connor enjoys under EU law, thanks to the European Charter of Fundamental Rights (Charter) and the CJEU's case-law, may no longer be enforceable once the UK leaves the EU.

From a fundamental rights viewpoint, the IESC and Mr O'Connor express their worries about the inapplicability of the Charter beyond the day in which the UK leaves the EU. This is ensured by clause 5(4) of the European Union Withdrawal Bill (hereinafter "the Repeal Bill"), which ensures that "The Charter of Fundamental Rights is not part of domestic law on or after exit day".<sup>8</sup> The Repeal Bill is particularly relevant for the Brexit

<sup>3</sup> Irish High Court, judgment of 2 November 2017, *Minister for Justice and Equality v. O'Connor*.

<sup>4</sup> *Ibid.*, para. 5.8.

<sup>5</sup> *Ibid.*

<sup>6</sup> On the equivalence of fundamental rights as the underpinning of the EAW and mutual trust: T. MARGUERY, *Rebuttal of Mutual Trust and Mutual Recognition in Criminal Matters: Is 'Exceptional' Enough?*, in *European Papers*, 2016, Vol. 1, No 3, [www.europeanpapers.eu](http://www.europeanpapers.eu), p. 943 *et seq.*

<sup>7</sup> *Minister for Justice v. O'Connor*, cit., para. 5.9

<sup>8</sup> Explanatory Notes to the European Union (Withdrawal) Bill, HL Bill 78, 18 January 2018, [publications.parliament.uk](http://publications.parliament.uk).

process, insofar as it repeals the European Communities Act 1972, which took the UK into the EU, and acts as a conduit making EU law applicable in the UK.<sup>9</sup> The Repeal Bill ensures that most EU law remains in force on exit day by incorporating it into UK domestic law in order to guarantee legal certainty, but it also ensures that certain pieces of EU legislation, such as the Charter, are repealed. This decision has been widely criticised by scholars and policy makers,<sup>10</sup> and an amendment to ensure that the Charter remained part of the UK legal system was put to a vote in the House of Commons, where it was defeated by 317 votes to 299.<sup>11</sup> The Repeal Bill ensures that some safeguards still remain in force via EU case-law and principles that will still be binding with regard to retained EU law, pursuant to clause 6(3)b, but this still implies a substantial reduction in the safeguards available.

Despite the unsuccessful attempts to avoid the repeal of the Charter, the Repeal Bill will begin the Committee stage on February 21<sup>st</sup> where there will be a line-by-line assessment of the legislation, but no substantial change is expected with regard to the status of the Charter. If the Repeal Bill passes its final stages without substantial amendments and no additional agreement is reached with regard to the Charter in the UK-EU negotiations, it will cease to apply on exit day.<sup>12</sup>

The other issue that was raised by the IESC in connection with the “Brexit point” is the lack of jurisdiction of the CJEU over the UK after Brexit.<sup>13</sup> Clause 6(1)b of the Repeal Bill ensures that no Court or Tribunal in the UK will be able to refer any matter to the CJEU after Brexit, although retained EU law will still be interpreted in accordance with case law delivered by the Court before or on exit day pursuant to clause 6(3)a of the Repeal Bill.

Unless a bilateral agreement between the EU and the UK is reached, article 50 TEU and the wording of the Repeal Bill mean that Mr O'Connor would not be entitled to the same rights during a part of his imprisonment as he would enjoy at the moment of his surrender.<sup>14</sup> It is worth remembering that it is precisely the existence of those rights that allow the quasi-automatic functioning of mutual recognition within the EAW.<sup>15</sup> In other

<sup>9</sup> European Communities Act of 17 October 1972.

<sup>10</sup> S. DOUGLAS-SCOTT, *An ‘Utterly Pernicious’ Bill?*, in *The UK in a Changing Europe*, 18 September 2017, ukandeu.ac.uk; K. ZIEGLER, C. SAENZ PEREZ, *EU Bill: ‘Supermaxing’ Eu Law and Reducing Fundamental Rights Protections*, in *UK in a Changing Europe*, 10 October 2017, ukandeu.ac.uk; P. SYRPIS, *Repeal Bill Paves the Way For a Removal of Rights After Brexit*, in *The Conversation*, 5 September 2017, theconversation.com.

<sup>11</sup> House of Commons, Considerations on the European Union Withdrawal Bill, 16 January 2018, hansard.parliament.uk.

<sup>12</sup> The Charter could remain in force during the transitional period depending on the Brexit agreement reached by the UK and the EU over this period.

<sup>13</sup> *Minister for Justice v. O'Connor*, cit., para. 5.12.

<sup>14</sup> On the interpretation of Art. 50 TEU see M. GATTII, *Art. 50 TEU: A Well-Designed Secession Clause*, in *European papers*, 2017, Vol. 2, No 3, www.europeanpapers.eu, p. 159 *et seq.*

<sup>15</sup> On the balance between mutual recognition in criminal matters, mutual trust and the protection of fundamental rights, according to the CJEU see S. MONTALDO, *On a Collision Course! Mutual Recognition, Mutual Trust and the Protection of Fundamental Rights in the Recent Case-law of the Court of Justice*, in *European Papers*, 2016, Vol. 1, No 3, www.europeanpapers.eu, p. 965 *et seq.*

words, it is the mutual trust in the existence of equivalent fundamental rights guarantees and principles that allow Member States to quickly execute an EAWs, without examining the merits of the case, the human rights protections, or the double criminality of the offence.<sup>16</sup> Once the UK withdraws from the EU, that mutual trust will no longer apply as the UK will no longer be bound by EU law.

### III. THE GOVERNMENT'S POSITION

In this matter, the Government's opinion expressed through the Minister of Justice was that the surrender "must be determined on the basis of the law as it now is and that, on that basis, no issue of European law arises".<sup>17</sup> The point that the Irish government was trying to make is that the IESC should decide on the basis on the applicable law today, and not elucubrate about the possible legislative changes that a given Member State may undertake. This opinion, nonetheless, is not satisfactory insofar as the changes in the applicable law after Brexit are not a theoretical speculation once the UK has activated the withdrawal procedure of Art. 50 TEU, as the IESC reminded,<sup>18</sup> and could have a serious impact on Mr O'Connor's rights.

The Irish government, with these submissions, fails to seek adequate protections for Mr O'Connor after his surrender to the UK. Specific examples of the rights that Mr O'Connor could lose are provided by the Court (e.g. the reduction in the sentence for a period of time spent in custody on foot of an earlier EAW which was found to be invalid). Alternatively, the Irish Government could have requested assurances from the UK Government with regard to the specific case of Mr O'Connor, especially in connection with the sentence reduction due to time already served. The use of assurances is common within the Council of Europe Convention on Extradition of 1957, and is also applied by Member States when executing EAWs.<sup>19</sup> These assurances have been proposed by Member States in numerous occasions, e.g. Germany and France proposed the request of assurances to ensure that prisoner's rights would not be violated in *Caldararu and Aranyosi*.<sup>20</sup> The Minister for Justice could have

<sup>16</sup> Mutual trust is a principle that has been considered the underpinning value of the cornerstone that is mutual recognition within judicial and police cooperation in criminal matters. It was introduced in the European Council Presidency Conclusions of 15-16 October 1999, "Milestone" No. 33, as the "cornerstone of judicial cooperation in criminal matters".

<sup>17</sup> *Minister for Justice v. O'Connor*, cit., para. 5.11.

<sup>18</sup> *Ibid.*, para. 5.13.

<sup>19</sup> On the issue of assurances in extradition law within the members of the Council of Europe see A. IZUMO, *Diplomatic Assurances against Torture and Ill Treatment: European Court of Human Rights Jurisprudence*, in *Columbia Human Rights Law Review*, 2010, p. 233 *et seq.*

<sup>20</sup> Court of Justice, judgment of 5 April 2016, joined cases C-404/15 and C-659/15, *Pál Aranyosi and Robert Căldăraru*. The importance of these ruling for the protection of fundamental rights has been analysed in S. MONTALDO, *A New Crack in the Wall of Mutual Recognition and Mutual Trust: Ne Bis in Idem and the Notion of Final Decision Determining the Merits of the Case*, in *European Papers*, 2016, Vol. 1, No 3, [www.europeanpapers.eu](http://www.europeanpapers.eu), p. 1183 *et seq.*

sought an individual assurance, in which the UK authorities accepted to ensure the protection of Mr O'Connor's rights after Brexit. This compromise would not address the lack of jurisdiction of the CJEU, but would have solved some of the doubts raised in relation to the fundamental rights that Mr O'Connor would enjoy *after* Brexit.

In any case, there is no guarantee that the Court would be satisfied by the diplomatic assurances offered by a Member State that soon will cease to be part of the EU, in such a sensitive matter. This distrust is justified by the lack of enforcement mechanisms to correct any deviation from the initial assurances given. Once the individual is surrendered, the issuing Member State can violate the assurances given to the executing Member State, and there are no tools to redress the situation. Ireland could only retaliate using diplomatic channels, but no claim could be brought against the UK. Additionally, the concession of diplomatic assurances in this case would not solve the, approximately, 20 cases pending in front of the Irish High Court for similar reasons.<sup>21</sup>

#### IV. WHY IS THIS PRELIMINARY RULING RELEVANT?

Together with the request for a preliminary ruling launched by the Amsterdam District Court,<sup>22</sup> which investigates the maintenance of EU citizenship and the rights that derive from it in favour of British citizens living in the EU,<sup>23</sup> this referral is the only one dealing with Brexit-related matters to reach the CJEU. A ruling of the CJEU in the case of Mr O'Connor will be of particular relevance to determine the requirements of a future agreement, and a transitional deal covering surrenders in which imprisonment will lapse beyond the Brexit date. It is important to note that this field is one in which the UK Government wants to continue being part of the EAW and other judicial cooperation measures after Brexit. Indeed, in the Government's position paper on *Security, Law Enforcement and Criminal Justice* it was said that the Government's goal is to "maintain the closest and most cooperative of partnerships, continuing the longstanding traditions of friendship between the 27EU and the UK".<sup>24</sup> In light of the willingness of the UK Government to retain the EAW and other EU criminal measures, the UK House of Lords elaborated a report on the impact of Brexit on

<sup>21</sup> *Minister for Justice v. O'Connor*, cit., para. 5.20.

<sup>22</sup> Court of Amsterdam, judgment of 7 February 2018, Case C/13/640244/KG ZA 17-1327.

<sup>23</sup> The two questions referred to the CJEU in Case C/13/640244 / KG ZA 17-1327 are: 1) Does the withdrawal of the United Kingdom from the EU automatically lead to the loss of EU citizenship of nationals of this state and, thus, to the elimination of rights and freedoms deriving from EU citizenship if and insofar as the negotiations between the European Council and the United Kingdom are not otherwise agreed? 2) If the first question is answered in the negative, should conditions or restrictions be imposed on the maintenance of the rights and freedoms to be derived from EU citizenship?

<sup>24</sup> UK Government, *Security, Law Enforcement and Criminal Justice: A Future Partnership Paper*, 2017, [www.gov.uk](http://www.gov.uk), para. 18.

the EAW, which examined the possibilities of retaining the EAW after Brexit, as well as alternatives to this mechanism.<sup>25</sup> In this paper, Sir Francis Jacobs already warned about the difficulties of securing extraditions from other EU Member States once the Charter and other EU fundamental rights legislation are no longer applicable in the UK.<sup>26</sup>

Until now, the UK has secured a special position within the EU, characterised by its block opt out from Title V measures in the Lisbon Treaty pursuant to Protocol no. 21<sup>27</sup>, and its selective opt ins in the AFSJ.<sup>28</sup> Additionally, the UK secured Protocol no. 36, which guaranteed the maintenance of pre-Lisbon limited powers of EU institutions with regard to criminal law and police measures for a period of five years after the entry into force of the Lisbon Treaty. On 26 July 2013, the UK notified its opt out from all policing and criminal law measures before the end of the transitional period. Soon after that, the UK exercised its right to opt back into 35 criminal law and policing measures, among others the EAW.<sup>29</sup> These specific Protocols have given the UK a special status within the AFSJ that has allowed this Member State to “cherry pick” the measures that it is interested in adopting, in accordance with the provisions contained in Protocol no. 21.

As a result, the UK participates in measures such as the EAW, but it does not take part in other directives aimed at strengthening the rights of the accused within the EAW mechanism. For instance, the UK has not opted into all the directives that are part of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings approved following the mandate of Art. 82, para. 2, TFEU.<sup>30</sup> An striking example is the UK's opt out from Directive 2013/48/EU on the Right of Access to a Lawyer in criminal proceedings and in European Arrest Warrant proceedings.<sup>31</sup> In other words, the UK as a member of the EU has been granted an advantageous position that allows it

<sup>25</sup> House of Lords, EU Committee, *Brexit: Judicial Oversight of the European Arrest Warrant*, 27 July 2017, HL Paper 16, publications.parliament.uk.

<sup>26</sup> *Ibid.*, para. 67.

<sup>27</sup> This terminology has been profusely used by Peers in several of his articles, such as S. PEERS, *The UK's planned bloc opt-out from justice and policing measures in 2014*, in *Statewatch Report*, 16 October 2012, www.statewatch.org, p.1 *et seq.*

<sup>28</sup> Protocol no. 21 of the Treaty on European Union on the Position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice (Protocol No 21) works as a derogation from all criminal law and policing measures, and also confers the UK to selectively opt into individual measures adopted before the Lisbon treaty and afterwards.

<sup>29</sup> For an analysis about the transitional period and the decisions reached by the UK after this period: For an analysis see V. MITSILEGAS, S. CARRERA, K. EISELE, *The End of the Transitional Period for Police and Criminal Justice Measures Adopted before the Lisbon Treaty. Who Monitors Trust in the European Justice Area?*, in *CEPS Paper in Liberty and Security in Europe*, 8 December 2014, www.ceps.eu.

<sup>30</sup> Resolution of the Council of 30 November 2009 on a Roadmap for Strengthening Procedural Rights of Suspected or Accused Persons in Criminal Proceedings (Roadmap Directives).

<sup>31</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

to participate in mutual recognition measures without fully adopting the fundamental rights safeguards that underpin this legislation. Authors have criticised this approach as undermining the effectiveness of the FD on the EAW, and perpetuating a security-driven approach to judicial cooperation in criminal matters that does not ensure the full protection of the rights of the accused.<sup>32</sup>

It is therefore surprising that Brexit and a future ruling of the CJEU in the case of Mr O'Connor, and on the fundamental rights applicable to UK extraditions after Brexit could drastically change the *status quo*. Once the UK leaves the EU, Protocol No. 21 will cease to apply, and the CJEU in *Minister of Justice v. O'Connor* will be able to determine the fundamental rights safeguards applicable to the UK irrespective of previous agreements, and opt outs agreed on a pre-Brexit scenario. Arguably, this judgment could anticipate something that has already been described as a paradox.<sup>33</sup> Indeed, the UK's efforts to secure a judicial cooperation agreement with the EU after Brexit will only be accepted by the CJEU if the UK fully complies with the EU *acquis*, including fundamental rights measures. This could lead to a situation in which the UK has to accept more EU legislation in EU criminal law after withdrawal than before in order to ensure a comparable level of cooperation with the rest of the EU after Brexit.

Despite all the complications, the CJEU's judgment should clarify what are the requirements to grant surrenders to the UK in cases in which the penalties imposed to the accused could continue after Brexit, and what are the requirements for transitional arrangements until an EU-UK on judicial and police cooperation agreement that includes these individuals is reached. This ruling is likely to have an effect that goes beyond the 20 cases on hold within the IEHC, as it will affect individuals extradited to the UK on the basis of EAWs who would serve their sentences beyond 29 March 2019, as well as EAW requests awaiting execution in other EU member states.

## V. THE CURRENT NEGOTIATIONS

Current negotiations between the UK and the EU are focusing on the transitional period, and the situation of Ireland in a future UK-EU agreement, with a special focus on the situation of Northern Ireland and the status of the land border with the Republic of Ireland.<sup>34</sup> After this stage, it is expected that the negotiation priority would shift to the future of trade and commerce after Brexit and to status of citizen rights after Brexit. The future of judicial and police cooperation in criminal matters is not been envisaged as a priority in the negotiation agenda of the upcoming months.

<sup>32</sup> V. MITSILEGAS, *EU Criminal Law After Lisbon*, Oxford: Hart Publishing, 2016, ch. 6.

<sup>33</sup> V. MITSILEGAS, *European Criminal Law after Brexit*, in *Criminal Law Forum*, 2017, p. 249 *et seq.*

<sup>34</sup> European Commission, *Brexit: European Commission Receives Mandate to Begin Negotiations With the United Kingdom on Transitional Arrangements*, 29 January 2018, [europa.eu](http://europa.eu).

When these talks start, the main difficulties for any future partnership will be found in the same issues raised by the IESC in relation with *Minister of Justice v. Mr O'Connor*, namely the loss of jurisdiction of the CJEU and the lack of equivalent fundamental rights protections after Brexit. In relation with the continuity of the EAW, the EU-Norway and Iceland Agreement on the EAW has been referred as a possible model that the UK could follow.<sup>35</sup> In Art. 36 of this agreement, there is a dispute settlement clause that does not refer to the CJEU, but to a dispute settlement mechanism that includes representatives of the governments of the Member States of the European Union, Iceland and Norway. Similar dispute resolution mechanisms have been proposed by the House of Lords' paper on the future of the EAW, where some Lords referred to the possibility of incorporating some sort of arbitration as a mechanism to settle disputes over the interpretation and application of any future agreement on the EAW.<sup>36</sup>

Arguably, a similar mechanism could satisfy the demands of the UK Government that does not want to submit itself to the jurisdiction of the CJEU after Brexit. Nevertheless, most of the expert witnesses consulted by the Home Affairs Committee of the House of Commons already highlighted the difficulties of implementing a non-judicial mechanism in a field that interferes so directly with the rights and freedoms of the individual, and suggested that the best alternative for the UK would be the creation of a judicial body with competences to interpret and settle disputes in cases concerning the equivalent EAW in place after Brexit.<sup>37</sup>

In any case, dispute settlement may be one of the things in which the UK government might be willing to compromise, as Theresa May has recently declared that she is ready to make concessions about the acceptance of CJEU's case-law and jurisdiction in order to ensure a UK-EU security deal.<sup>38</sup> When referring to "security", the UK Government usually refers to judicial and police cooperation in criminal matters.<sup>39</sup> In fact, Theresa May included the continuous operation of the EAW and the participation in EU agencies, such as Europol and Eurojust, as priorities for the Government within any new deal.

In any case, it is highly unlikely that the concerns over the protection of fundamental rights and the competences of the CJEU will be settled before the CJEU delivers its ruling in this case, especially if the Court accepts applying the urgent preliminary procedure to

<sup>35</sup> Agreement of 27 June 2006 Between the European Union and the Republic of Iceland and the Kingdom of Norway on the Surrender Procedure Between the Member States of the European Union and Iceland and Norway.

<sup>36</sup> House of Lords, EU Committee, *Brexit: Judicial Oversight of The European Arrest Warrant*, cit., paras 5, 27, 31, and 41.

<sup>37</sup> House of Commons' Home Affairs Committee, Oral Evidence submitted in relation with the delivery of Brexit: Policing and Security Co-Operation on 5 December 2017, data.parliament.uk.

<sup>38</sup> D. BOND, G. CHAZAN, *May Calls For New UK-EU Security Treaty*, in *Financial Times*, 17 February 2018, www.ft.com.

<sup>39</sup> As referred in fn. 18, the UK Government entitled the future partnership paper "Security, Law Enforcement and Criminal Justice", even though most of the measures referred to judicial and police cooperation in criminal matters.

fast track this case, in accordance with Art. 23, let. a), of the Statute of the CJEU as requested by the IESC. This is why the intervention of the CJEU in this case could be decisive in order to set the main requisites of any future agreement on the EAW, as well as to any surrender that may happen until Brexit day.

## VI. CONCLUSIONS

The CJEU's preliminary ruling on this matter has the potential to be a bombshell for the future of the EAW in the UK. If the CJEU decides to stop surrenders until there is final or a transitional agreement that ensures the protection of the rights of the defendants and adequate access to remedies, hundreds of requests issued by the UK could be halted.<sup>40</sup> This would especially impact Ireland and Spain that receive most of the EAWs issued by the UK, with 177 and 273 surrenders respectively in the period 2009-2017.<sup>41</sup> Additionally, as the IESC noted, if surrenders to the UK are stopped until the legal framework is clarified, it is very likely that the UK will also stop executing EAW requests coming from other EU members, what could turn the UK into a haven for those prosecution in any EU Member State.

Irrespectively of the political implications, the uncertainty regarding the fundamental rights applicable in the UK after Brexit makes this CJEU's ruling necessary. With the Repeal Bill, the Charter will cease to apply within the UK, and it is still very likely that the UK government will pursue its agenda of repealing the Human Rights Act as the Statute that implements the ECHR into British law, in order to replace it with a British Bill of Rights.<sup>42</sup>

Under these circumstances, it is clear that the conditions under which individuals are being surrendered to the UK and the fundamental rights that they are granted are significantly different to the ones that would be applicable after 29 March 2019, or after an eventual transitional period. After this period, the UK will no longer be part of the EU, the presumption of mutual trust that operates among EU Member States will no longer apply and, as a consequence, the automaticity of mutual recognition will no longer apply. As a consequence, it is important that the CJEU establishes adequate safeguards to protect surrenders to the UK in this interim phase, especially in relation to cases similar to Mr O'Connor, in which individuals may remain in prison for years after Brexit without a clear idea of what are the fundamental rights that they will enjoy.

<sup>40</sup> Approximation calculated using historical data on the EAW: National Crime Agency, *Wanted by the UK: European Arrest Warrant statistics 2009 – May 2016*, [www.nationalcrimeagency.gov.uk](http://www.nationalcrimeagency.gov.uk). For instance, between 2016 and 2017 the UK issued 345 EAW requests.

<sup>41</sup> *Ibid.*

<sup>42</sup> *The Conservative Party Manifesto: Strong Leadership, A clear Economic Plan and a Brighter More Secure Future*, 2015, [www.bond.org.uk](http://www.bond.org.uk) Although this priority seems to be far from becoming a legislative priority while the Brexit negotiations are ongoing, it remains a priority for the Conservative Party. An analysis on the issue can be found at: J. SWEENEY, *Theresa May's call for UK to exit European Convention on Human Rights will delight human rights abusers*, in *The Conversation*, 26 April 2016, [theconversation.com](http://theconversation.com).

