



# The impact of the ECHR in the EU

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# Treaty on the EU

## Article 6

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1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.
2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.



# Treaty on the EU

## Article 7

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- A serious and persistent breach of the principles in Article 6(1) may result in suspension of rights under TEU.
- This includes voting rights in Council



# Charter of Fundamental Rights and Freedoms 2000

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Single text setting out the whole range of civil, political, economic and social rights of European citizens and all persons resident in the EU.

Dignity

Freedoms

Equality

Solidarity

Citizens' rights

Justice

[www.eucharter.org](http://www.eucharter.org)



# European Arrest Warrant

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Council Framework Decision  
on the European Arrest  
Warrant and surrender  
procedures between Member  
States of 13<sup>th</sup> June 2002

[www.eurowarrant.net](http://www.eurowarrant.net)



# European Arrest Warrant

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## Human Rights considerations:

- Recital 12 (respect for principles in Art 6(1) TEU, Charter of Fundamental Rights, should not use for discriminatory purposes, should not conflict with domestic principles of freedom of expression, association and due process)
- Recital 13 (should not be removed where risk of death penalty or torture, inhuman or degrading treatment)
- Defence safeguards – Art 11 (right to lawyer and interpreter in accordance with national law)



# Extradition Act 2003

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- Incorporates Framework Decision into UK law
- Section 21 – Human Rights Act Bar



# Impact on rights

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- Art 5 (right to liberty)
- Art 8 (right to respect for private life)
- with Arts 14 ECHR and 12 TEU
- indirect impact upon Arts 3 and 6





# EAW Case law

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Dabas v Spain [2007] UKHL 6 – presumption in favour of mutual recognition

Articles 3, 5 and 6 ECHR

- *Famagusta District Court, Cyprus v Jason Wright and others*, 7 March 2007

Article 8 ECHR

- *Jaso and Others v Spain* [2007] EWHC 2983 Admin  
“striking and unusual facts”
- *Sandru v Romania* [2009] EWHC 2879  
“disproportionality does not amount to Art 8 ground”



# ECJ Case law

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*Case C-303/05 Advocaten voor de Wereld VZW v Leden van de Ministerraad, [2007] ECR I-03633*

*Categories of offences sufficiently serious to justify framework decision*

*Kadi, Joined cases C-402/05 P and C-415/05 P, ECR 2008 p 00000*

*“[A]ccording to the case-law of the European Court of Human Rights, there must also exist a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Court must determine whether a fair balance has been struck between the demands of the public interest and the interest of the individuals concerned.”*



# Defence safeguards

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- Wide disparity between systems of member states
- Mutual recognition = prosecution focussed
- Clear need for defence safeguards

*See Suspects In Europe, Cape et al., 2007*

*Eu Procedural Rights in Criminal Proceedings, Spronken et al., 2009*

*Effective Defence Rights, JUSTICE et el, 2010*



# Swedish Roadmap

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Roadmap on the rights of the individual in criminal proceedings

Measure A – Translation and Interpretation

Measure B – Information on Rights

Measure C – Legal Aid and Legal Representation

Measure D – Communication with relatives etc

Measure E – Special safeguards

Measure F – Green paper on pre-trial detention



# Lisbon Treaty

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- Binding legal force to the Charter of Fundamental Rights and Freedoms (except UK and Ireland)
- Accession by EU Institutions to the European Convention on Human Rights and Fundamental Freedoms