Fair Trials

ANNUAL REPORT

Leap

Legal Experts Advisory Panel

THE EUROPEAN NETWORK OF FAIR TRIAL DEFENDERS

Fair Trials
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Who we are

Academic institutions

Academics help analyse comparative trends and identify the gaps in existing frameworks. Their research work is key to inform legal changes. Academics also provide solid expertise into the legal trainings organised by Fair Trials.

Civil society organisations

Civil society organisations help to raise awareness about fair trial issues among the general public and advocate for change.
They act as a watchdog against any backsliding on defence rights.

Law firms

Legal practitioners are in the front line of the fight to protect the right to a fair trial. Their firsthand experience in police stations, detention centres and courts is an invaluable tool to identify and challenge failures and abuses in the criminal justice system.

The European Impacted Person Advisory Council

The European Impacted Persons Advisory Council (EIPAC) was created in September 2024 with the aim to advise Fair Trials Europe on its work, campaigns, policies, and strategy.
The EIPAC is composed of people with lived experience in various aspects of the criminal legal system who are committed to supporting its reform.

LEAP is coordinated by the Brussels office of Fair Trials, the global criminal justice watchdog.

For more information about LEAP, please write an email to: LEAP@fairtrials.net

JUSTICE IN EUROPE 2025/2026 LEAP ANNUAL REPORT

FAIR TRIALS

Fair Trials is a criminal justice watchdog, campaigning for fairness, equality and justice. Our team of experts exposes threats to justice through original research and identifies practical changes to fix them. We campaign to change policies and laws, support strategic litigation, reform policy and develop international standards and best practices. We do this by supporting local movements for reform and building partnerships with lawyers, activists, academics, experts by experience and other NGOs.

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LEAP in Context

The Legal Experts Advisory Panel (LEAP) is Fair Trials' network of fair trial defenders. Bringing together more than 200 lawyers, academics, civil society representatives, and people with lived experience in the criminal justice system from across Europe and beyond, LEAP works to uphold human rights, fairness, and justice in criminal justice systems across the continent, focusing on both the practical operation of these systems and the legal frameworks that underpin them.

In 2025, the network engaged with some of the most significant shifts underway in European criminal justice. Emerging technologies and the drive to digitalise justice systems continued to raise urgent questions about fair trial rights, as governments and EU institutions explored the use of AI and digital tools in investigations and proceedings. A major development in 2025, was the fact that the European Commission, together with the Council Presidency, launched the High-Level Forum on the Future of EU Criminal Justice, in an effort to take stock of the progress made so far and to build a vision of the future for EU criminal law. This process looked at evolving challenges and sought to assess whether the legal framework is fit for responding to them within the EU Area of Freedom, Security and Justice. Together with our NGO partners, we actively participated in this process, providing input and reflecting concerns raised by our LEAP members. References to both the outcomes of the Forum and our contributions to it can be found throughout this report.

Meanwhile, fifteen years after the entry into force of Directive 2010/64/EU on interpretation and translation, LEAP took stock of how far implementation has come, and how far it still needs to go. Throughout this, LEAP's work remained grounded in the day-to-day realities of criminal defence practice: the procedural rights of persons suspected and accused, [1] pre-trial detention, judicial cooperation, evidence in cross-border proceedings and extradition. The network

[1] Throughout this report, we refer to "person suspected and accused" rather than "suspect and accused person." This is a deliberate editorial choice. Language shapes how we think about people, and in criminal justice systems across Europe, those who are arrested, prosecuted, or detained are too often reduced to their legal status, stripped of their humanity before any verdict has been reached. By placing "person" first, we want to affirm that the individuals at the centre of this report are, above all, people. This choice reflects the influence of the European Impacted Persons Advisory Council (EIPAC), whose members, people with lived experience of criminalisation, have shaped Fair Trials' work and reminded us that reform starts with how we speak about those most affected by the system.

engaged with these issues through a range of activities. Members came together at the Annual Conference for substantive discussions on emerging legal challenges. Between conferences, Fair Trials ran a series of targeted LEAP consultations, allowing members to share knowledge from their own jurisdictions and collaborate on issues arising directly from their practice, both through online and in-person meetings.

The network also continued to diversify, with the European Impacted Persons Advisory Council (EIPAC) bringing people with lived experience of criminalisation into the heart of LEAP's work.

Advisory Board meetings and national-level meetings with LEAP members rounded out a year of sustained engagement across the network.

European Impacted Persons Advisory Council (EIPAC)

The European Impacted Persons Advisory Council (EIPAC) is an advisory committee composed of people with lived experience in various aspects of the criminal legal system who are committed to supporting the reform of the system. Formed in 2024 as an advisory body to Fair Trials Europe, EIPAC ensures that the voices of People with lived experience shape policies, campaigns, and Fair Trials advocacy efforts.

WHY EIPAC WAS CREATED

For years, Fair Trials and its network of legal experts, LEAP, have documented the failures of European criminal justice systems: arbitrary detention, barriers to legal representation, discriminatory policing, and the eroding of procedural rights. But the people most harmed by these failures, those who have been arrested, prosecuted, imprisoned, or wrongfully convicted and criminalised, have rarely held a formal role in shaping the responses to them. EIPAC was created to change that.

Fair Trials planned to enrich the LEAP network by incorporating expertise, gained through lived experiences within the criminal justice system, into LEAP activities. Integrating lived expertise into Fair Trials' European work is a long-term strategic objective of LEAP, and of the organisation as a whole. The council gives people who have been directly affected by criminalisation a central, authoritative role in reshaping Fair Trials' priorities, advocacy, and campaigns, not as subjects of research, but as experts and co-creators.

A PARTICIPATORY PROCESS FROM THE START

Fair Trials consulted a wide range of civil society organisations to define EIPAC's profile and mandate. They also contributed their expertise on how to work meaningfully and safely with people who have experienced criminalisation. Their input shaped the council's structure, values, and approach from the outset.

EIPAC currently brings together six members, each carrying a distinct form of expertise rooted in personal experience:

- Angelica Vieira – Lawyer

Wrongfully arrested in 2019 and coerced into a guilty plea; now holds an MSc in Comparative Criminal Justice, specialising in pre-trial detention, bail systems and procedural rights.

- Elton Kalika - Researcher and Journalist

Convicted at 20 and spent 14 years in Italian prisons; completed a PhD in sociology on solitary confinement; founded a legal helpdesk for prisoners and established Ristretti Orizzonti, a widely read prison journal.

- Karim Ridwan, Legal Interpreter, Human Rights Activist

Belgian-Palestinian researcher and human rights activist whose security clearance was revoked following his public criticism of institutional racism; he faced a SLAPP and his cases are under study by Amnesty International.

- Nuno Pontes, Researcher

Spent 21 years in prison, 14 in solitary confinement; founded a legal clinic during imprisonment; now a researcher on prison conditions at the University of Lisbon and part of the European Prison Observatory.

- Wael Habbal, refugee rights activist, community organiser

Community organiser, survivor of torture, was detained multiple times in Greece due to his appearance and public activities, leading to the unjust revocation of his asylum; an Obama scholar and sociology and urban studies student at Columbia University

- Tasos Theofilou, Journalist, Researcher, and Author, specialising in criminal justice and prisons

Falsely accused of terrorism in 2012 and sentenced to 25 years before his acquittal in 2017; now a journalist and advocate for prisoner rights and trial transparency.

Given the diversity of backgrounds and experiences within the group, the first year of EIPAC was deliberately designed as a foundational year, a time to build trust, establish shared values, and create the conditions for safe and sustainable collaboration.

BUILDING A TRAUMA-INFORMED ENVIRONMENT

Members took part in facilitated discussions to co-create group norms and develop a shared sense of safety. Fair Trials arranged a specialised training session delivered by the European Human Rights Advocacy Centre (EHRAC), focused on trauma-informed approaches when working with survivors of criminalisation, managing sensitive narratives in advocacy settings, and building empowering, sustainable working relationships.

EIPAC VOICES: STORIES OF LIVED EXPERIENCE IN JUSTICE REFORM

A monthly blog series, introducing EIPAC members and their personal experiences.

Angelica shared her experience of being detained and tried in Thailand. Her story reflects on the importance of procedural rights, of access to a lawyer and to an interpreter. It also illustrates the failures of traditional bail systems and issues with the plea-bargaining system, particularly how it encourages admissions of guilt despite evidence of a person's innocence.

Karim shared his experience of being targeted by French authorities because of articles he wrote and which offended French political figures. As a result, he was subject to deportation, job loss and was targeted by court cases. His story shows how judicial tactics can be used to target dissent and to silence critical voices.

Habbal described his experience as an asylum seeker and refugee, a journey of resilience and endurance but marked by abuse and uncertainty.

Tasos recalled his experience with the Greek justice system, how he spent five years in prison, accused of crimes he never committed to only be acquitted. His story raises questions about abuse and miscarriages of justice and the effects they have on people.

CONTRIBUTING TO INTERNATIONAL HUMAN RIGHTS POLICY

EIPAC and Fair Trials jointly submitted a contribution to the UN Office of the High Commissioner for Human Rights (OHCHR) *Call for input – OHCHR comprehensive study on human rights and the social reintegration of persons released from detention and persons subjected to non-custodial measures, pursuant to Human Rights Council resolution 57/9*.

The submission placed people with lived experience at the centre of the analysis, not as beneficiaries of reintegration policies, but as experts capable of shaping them.

Key elements of our submission include:

- A strong emphasis on centring people with lived experience as active stakeholders, not only as beneficiaries of reintegration policies, but as expert contributors in shaping those very policies.
- Four European case studies illustrating how lived experience can drive effective reintegration, by combating discrimination, stigma, and systemic barriers.
- A call for the recognition of impacted individuals' leadership in reintegration programmes, highlighting how their advocacy, peer engagement, and co-design of policies can produce more sustainable and human-rights-oriented outcomes.

From 2025, EIPAC began drafting a Guidelines Handbook on Meaningfully Embedding Lived Experience in Fair Trials' Work. The handbook, written by EIPAC members themselves, covers organisational readiness, inclusive language, outreach and engagement, representation in core work, collaboration between EIPAC and LEAP, and implementation monitoring. It is both a practical roadmap and a statement of principle: that people who have experienced injustice should not merely be consulted but empowered to co-create and carry out work intended to reform the criminal justice system.

During the LEAP Conference 2026 in Athens, EIPAC members presented the year's work and the guidelines to the LEAP members. The gathering marked the end of the foundational year and the beginning of a new cycle, one in which EIPAC, now at full membership, will move from building its foundations to shaping Fair Trials' advocacy in concrete and visible ways.

The creation of EIPAC reflects a broader shift in how Fair Trials understands its mission. Defending fair trial rights is stronger, morally and strategically, when it is led, in part, by those who have lived through the system's failures. In the year ahead, EIPAC will finalise its guidelines for Fair Trials, deepen its collaboration with LEAP, and contribute to Fair Trials' research, campaigns, and public advocacy in ways that are both expert and unmistakably human.

LEAP Annual Conference

One of the highlights of LEAP is the LEAP Annual Conference, an event that brings together defence lawyers, academics, policymakers, and people with lived experience from across Europe to engage in meaningful discussions on emerging legal challenges and human rights concerns. The conference is a space for collective reflection and debate, a forum where ideas and expertise come together to strengthen justice across the continent, and where the concerns of practitioners on the frontlines of criminal defence meet the broader policy and advocacy agenda of the network.

MILAN

The 2025 LEAP Annual Conference took place in Milan on 21–22 February, under the title *"Empowering Justice: Addressing Current and Enduring Challenges in Criminal Proceedings"* a space for collective reflection and debate where the concerns of practitioners on the frontlines of criminal defence meet the broader policy and advocacy agenda of the network.

Discussions ranged across some of the most pressing fault lines in contemporary criminal justice. The use of new technologies in detention, from neurotechnologies to AI-driven surveillance, raised serious questions about the boundaries of state power and the protection of prisoners' rights. The uneven implementation of EU procedural rights directives, from interpretation and translation to mutual recognition instruments, illustrated the persistent gap between legal standards on paper and practice on the ground.

The panel on interpretation and translation, in particular, sparked a wider reflection on the state of Directive 2010/64/EU fifteen years after it entered into force, a reflection that shaped the policy work and practitioner consultations that Fair Trials carried out throughout the year, and which is documented in detail later in this report.

The conference also grappled with the challenges posed by encrypted communications evidence and secret surveillance in criminal proceedings, and with the need for stronger procedural safeguards for neurodivergent defendants and persons with disabilities.

ATHENS

The 2026 LEAP Annual Conference took place in Athens on 6–7 February, under the title *"Humanizing Criminal Justice."* Participants engaged in substantive discussions on the state of criminal justice across Europe, the growing role of artificial intelligence in criminal proceedings, the protection of vulnerable defendants, and the evolving application of the European Arrest Warrant.

The conference opened with a frank assessment of the Greek criminal justice system — including prison overcrowding and the criminalisation of protest. A dedicated panel examined the systemic risks AI-driven technologies pose to defence rights and the fragmented regulatory landscape that currently governs their use in law enforcement.

The second day featured a keynote from UN Special Rapporteur Margaret Satterthwaite on the threats facing justice systems globally, followed by panels on the protection of vulnerable suspects, the criminalisation of poverty, and the humanisation of the European Arrest Warrant in the post-*Aranyosi/Căldăraru* era.

In addition to the plenary sessions, the Athens conference featured parallel practitioner discussions, each facilitated by LEAP members. Among these, one session presented the Fair Trials Index Project, which introduced a new global tool developed by Fair Trials and Freshfields to compare how criminal justice systems comply with the right to a fair trial from arrest to final judgment. Participants engaged in a hands-on discussion on methodology, indicators, data collection, and impact.

LEAP consultations

LEAP's greatest strength is the breadth of its members' knowledge and experience. Throughout 2025, Fair Trials reached out to members with targeted requests for input, gathering first-hand evidence from across EU jurisdictions to inform our research, policy submissions, and comparative analysis.

Additionally, we continued to facilitate exchanges within the network on issues arising directly from members' practice, giving lawyers a direct channel to put questions to colleagues across Europe and draw on their expertise. Whether navigating an unfamiliar jurisdiction, challenging a novel legal argument, or seeking comparative insight on a specific procedural question, members could reach out to the network and expect substantive responses from practitioners who had faced the same issues on the ground.

These exchanges took place through a combination of formats: the practitioner discussions held during the Annual Conference, which brought members together for focused debate on specific legal and advocacy challenges; online and in-person consultation meetings organised throughout the year; and written requests for input shared across the network. Together, these formats allowed the network to engage collectively and comparatively on the issues that matter most to criminal defence practitioners across Europe.

EU Criminal Justice in Practice: Insights from LEAP

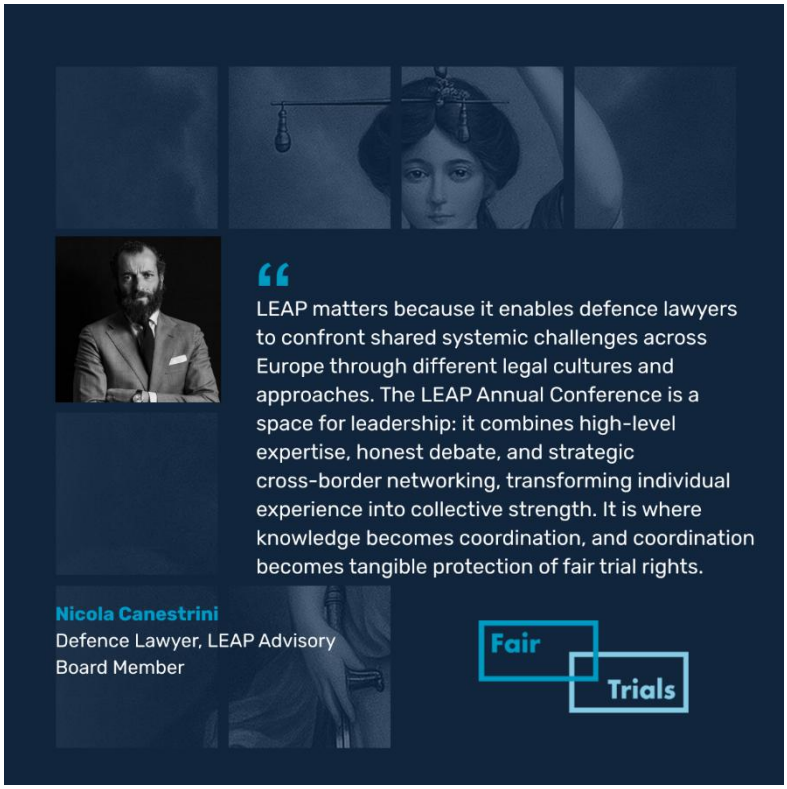
Across the European Union, criminal justice systems are increasingly interconnected, shaped by a combination of common procedural rights standards and expanding tools for judicial cooperation. This framework is intended to ensure that cooperation is grounded in trust and underpinned by fundamental rights. However, experience from practitioners shows that this balance is not always achieved in practice, with persistent gaps between legal standards and their implementation, and growing pressure to prioritise efficiency over safeguards.

Through its work, the Legal Experts Advisory Panel (LEAP) brings practice-based insight into how these systems operate on the ground. Its contributions focus in particular on procedural rights and judicial cooperation, highlighting systemic challenges and informing policy discussions with comparative evidence.

The following chapters draw on these insights to identify key areas where gaps remain and where further action is needed to ensure that the EU's criminal justice framework delivers both effective cooperation and meaningful protection of fundamental rights.

Procedural Rights

The Right to Interpretation and Translation: Persistent Structural Gaps in EU Criminal Justice



Fifteen years after the adoption of Directive 2010/64/EU, the right to interpretation and translation remains a cornerstone of fair trial rights across the European Union. As a “gateway right”, it enables persons suspected and accused to understand proceedings, communicate with counsel, and exercise their defence effectively. Yet, despite near-complete formal transposition across Member States, the evidence gathered by Fair Trials and its LEAP reveals a stark and persistent reality: this right is still not being realised in practice.

A key moment that refocused attention on these issues was Fair Trials’ strategic litigation before the Italian Constitutional Court, where the organisation intervened to challenge systemic shortcomings in the framework governing interpreter compensation. The Court’s ruling in favour of Fair Trials’ arguments brought renewed attention to the structural weaknesses affecting the provision and quality of interpretation in criminal proceedings, highlighting how underfunding and lack of professional standards directly impact the fairness of trials. [2]

Building on these litigation efforts, Fair Trials, drawing on extensive LEAP consultations across jurisdictions, developed a detailed policy brief examining the

[2] Fair Trials, Italian Constitutional Court Rules in Favour of Fair Trials’ Argument on Interpreter Compensation - Fair Trials (February 13, 2025).

implementation of the Directive. That brief provides a comprehensive analysis of the issues outlined below and sets out recommendations for reform.

This implementation gap is not technical or incidental. It is systemic, structural, and widespread, affecting all stages of criminal proceedings, from arrest to trial and detention. The result is a justice system in which individuals who do not understand the language of proceedings remain effectively excluded from their own defence.

A GAP BETWEEN LEGAL GUARANTEES AND PRACTICAL ACCESS

The most striking trend across jurisdictions is the disconnect between formal legal guarantees and their practical availability. In most Member States, the right to interpretation and translation is formally recognised in criminal procedure legislation. However, practitioners consistently report that access to interpretation, particularly during the early stages of proceedings—remains inconsistent.

Access is especially problematic during police questioning, pre-trial detention, and informal interactions with authorities. These early procedural moments are often decisive for the defence, yet they are also the stages where interpretation services are most frequently absent or delayed. Where interpretation is not provided immediately, individuals may unknowingly waive rights, sign documents they do not understand, or provide statements that later become key evidence against them.

In many jurisdictions, interpretation services are more reliably available during formal court hearings than during investigative phases. This imbalance creates a structural risk: by the time interpretation becomes available in court, procedural decisions may already have been made on the basis of misunderstood information.

BARRIERS TO EFFECTIVE LAWYER–CLIENT COMMUNICATION

Another recurring problem concerns access to interpretation for confidential communication between defendants and their lawyers. Although the Directive explicitly recognises the need for interpretation during such exchanges when they are directly connected to the proceedings, practitioners report that this right is frequently restricted in practice.

In several Member States, interpretation for lawyer–client meetings is available only during court hearings and not during prison visits, pre-trial preparation, or consultations prior to questioning. In practice, defence lawyers often have to rely on their own arrangements for interpretation or communicate with clients through improvised means. This can severely limit the ability of suspects to explain their version of events, challenge evidence, or give meaningful instructions to counsel.

In **Greece**, despite legal provisions guaranteeing interpretation at all stages, practitioners report that in reality services are mostly available only during court proceedings, largely due to shortages and low remuneration.[3] In **Romania**, legal aid lawyers often meet their clients only shortly before hearings, with limited time and no private space to communicate through an interpreter, sometimes even in the presence of judicial authorities during videoconference hearings. [4] By contrast, in **Ireland** and **Germany**, interpretation for lawyer–client communication is more consistently funded by the state, although practical barriers remain.

These barriers disproportionately affect individuals who rely on legal aid and those held in custody, where logistical constraints make arranging interpretation particularly difficult. As a result, the right to legal assistance can become largely symbolic when linguistic barriers remain unresolved.

RESTRICTIVE APPROACHES TO TRANSLATING ESSENTIAL DOCUMENTS

The translation of "essential documents" remains one of the most contested areas of implementation. The Directive requires written translation of documents necessary to safeguard the fairness of proceedings, including decisions depriving a person of liberty, indictments and judgments. However, national practice often adopts a narrow interpretation of what qualifies as "essential."

In several jurisdictions, only a limited list of documents is translated automatically, while requests for additional translations are frequently rejected. Practitioners report that critical materials, such as expert reports, witness statements, or technical evidence, are often not translated even when they form the basis of the

[3] Minutes from Greek LEAP National Consultation on the right to interpretation and translation (4 July, 2025).

[4] Minutes from Romanian LEAP National Consultation on the right to interpretation and translation (27 November, 2025).

prosecution's case. In such situations, defendants may receive only oral summaries or brief explanations rather than full written translations.

In **Poland**, only a limited number of documents are translated, often with delays. In **France**, translations frequently cover only selected passages rather than full documents. Practitioners from **Portugal** report that courts routinely refuse to translate key evidentiary material relied upon in indictments, including expert reports and intercepted communications.[5] In **Italy**, courts have taken the position that certain decisions—such as those subject only to cassation appeal—do not require translation, limiting the defendant's direct understanding of the case.[6]

This restrictive approach can significantly hinder the defence's ability to analyse evidence, identify inconsistencies, or prepare procedural challenges. Without access to key documents in a language they understand, suspects and accused persons remain dependent on intermediaries to interpret the case against them.

PERSISTENT CONCERNS ABOUT QUALITY AND PROFESSIONAL STANDARDS

Beyond access, **the quality of interpretation and translation services** represents another systemic concern. The Directive requires Member States to ensure that linguistic assistance is of sufficient quality to safeguard the fairness of proceedings. In practice, however, quality assurance mechanisms remain fragmented and inconsistent across the EU.

Many jurisdictions lack clear professional qualification standards for legal interpreters and translators. Even where official registries exist, the criteria for inclusion can be minimal, and courts frequently rely on interpreters who are not formally registered due to shortages of available professionals. Practitioners report significant variation in linguistic competence, familiarity with legal terminology, and understanding of courtroom procedures.

A striking example of the consequences of poor-quality interpretation comes from **Ireland**. In a high-profile criminal case concerning female genital mutilation, serious and far-reaching inaccuracies in interpretation were identified on appeal. These deficiencies prevented the defendants from effectively participating in the

[5] Minutes from Portuguese LEAP National Consultation on the right to interpretation and translation (16 July, 2025).

[6] Minutes from Italian LEAP National Consultation on the right to interpretation and translation (2 July, 2025).

proceedings and ultimately led to the convictions being overturned. Practitioners have pointed out that, despite the significance of the case, the interpreter involved continued to work within the system, illustrating the weakness of accountability mechanisms.[7]

Mechanisms for reviewing or challenging poor interpretation are also weak. In many cases, it is extremely difficult to demonstrate that interpretation was inadequate, particularly when proceedings are not fully recorded or when transcripts summarise rather than reproduce the dialogue. As a result, errors in interpretation may go undetected and uncorrected, even when they affect the outcome of proceedings.

STRUCTURAL SHORTAGES AND INADEQUATE FUNDING

Underlying many of these challenges is a structural problem: **the shortage of qualified interpreters and translators willing to work within criminal justice systems**. Low remuneration, delayed payments and heavy administrative requirements discourage language professionals from joining official registries or accepting court assignments.

Comparative information gathered from practitioners indicates significant disparities in remuneration across Europe, with some jurisdictions offering hourly rates that are far below market standards. In such conditions, highly qualified professionals often choose to work in other sectors, leaving courts to rely on less experienced interpreters or ad hoc arrangements.

In **Greece**, interpreters receive between €11.70 and €35.22 per day, with minimal qualification requirements, making the profession unattractive for qualified professionals. In **Italy**, the previous system of "vacations" resulted in extremely low fees, so low that it was successfully challenged before the Constitutional Court, which recognised that inadequate remuneration can directly affect the quality of interpretation.

These funding challenges create a vicious cycle: low pay discourages qualified interpreters, shortages reduce service quality and availability, and poor quality further undermines trust in the system.

[7] Minutes from Irish LEAP National Consultation on the right to interpretation and translation (7 December, 2025).

WEAK REMEDIES AND THE RISK OF PROCEDURAL DILUTION

A further trend concerns the **limited effectiveness of remedies for violations of interpretation and translation rights**. Although the Directive requires Member States to provide mechanisms to challenge decisions denying interpretation or to complain about inadequate services, these remedies are often difficult to use in practice.

In several jurisdictions, courts increasingly assess procedural violations through the broader concept of the "fairness of the proceedings as a whole." Under this approach, individual breaches of procedural rights may not lead to consequences if courts conclude that the overall process remained fair. Practitioners warn that this trend risks weakening the enforceability of procedural rights by treating them as optional safeguards rather than binding guarantees.

National examples show diverging approaches. In **France** and **Italy**, courts require a showing of concrete prejudice before recognising violations, limiting the practical impact of the right. In **Romania**, violations may lead only to relative nullity, requiring proof that the breach could not otherwise be remedied. By contrast, **Cyprus** provides a more immediate procedural remedy, while **German** courts have, in some cases, quashed judgments where translation was not provided in a timely manner.

When violations have no meaningful procedural consequences, the incentive for authorities to ensure full compliance with the Directive is significantly reduced.

IMPLICATIONS FOR EU JUSTICE AND MUTUAL TRUST

The shortcomings identified in the implementation of the Interpretation and Translation Directive raise broader concerns for the functioning of the EU justice system. The EU's framework for judicial cooperation relies heavily on mutual trust between Member States, the assumption that all national systems respect fundamental rights to an equivalent standard.

Where procedural rights such as interpretation and translation are implemented inconsistently, that assumption becomes increasingly difficult to sustain. Divergent practices may undermine confidence in cross-border instruments such as the European Arrest Warrant and other mechanisms based on mutual recognition.

A NEED FOR A RENEWED POLICY AGENDA

The right to interpretation and translation is not a technical procedural safeguard; it is a **precondition for justice itself**.

Without it, individuals cannot understand the case against them, participate in proceedings, or exercise their defence rights. The consequences are profound: wrongful convictions, procedural injustice, and erosion of trust in the rule of law.

Fifteen years after the Directive's adoption, the challenge is no longer one of legal recognition, but of **effective implementation**. Bridging this gap requires political will, sustained investment, and renewed commitment at EU level.

Without such action, the promise of equal justice across the European Union will remain unfulfilled.

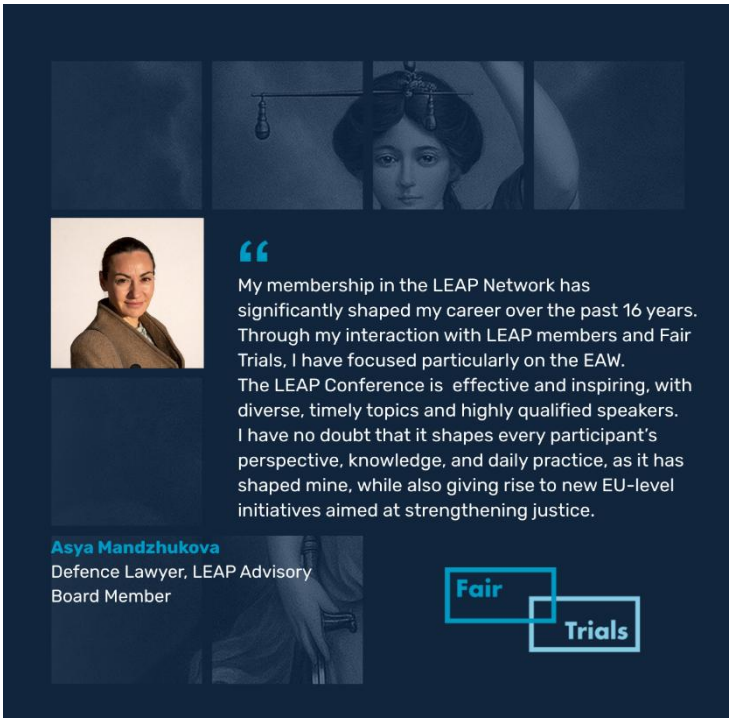
Access to a Lawyer: Implementation Challenges

Over the past decade, the Directive on access to a lawyer 2013/48/EU has contributed to a shared baseline of protections, reinforcing existing guarantees in some jurisdictions and introducing new ones in others. This has led to a degree of convergence in legal standards and a broader recognition of the importance of early and effective legal assistance in criminal proceedings.

However, evidence gathered from practitioners suggests that the existence of this framework has not always translated into consistent practice. While the right is widely recognised in law, its effective delivery remains uneven, shaped by structural limitations, resource constraints, and institutional practices that continue to hinder its full realisation.

A recurring concern relates to the earliest stages of criminal proceedings. The Directive places particular emphasis on early access, acknowledging its importance in safeguarding the rights of suspects from the outset. In some jurisdictions, systems are in place to facilitate such access, including duty lawyer

schemes and state-funded assistance. Yet, practitioners report that, in practice, **individuals are still frequently left without legal support during the first hours of detention**. These initial stages remain critical, and the absence of legal assistance at this point can have lasting consequences for the fairness of the proceedings.[8]



The effectiveness of access to a lawyer is closely linked to the functioning of legal aid systems. Where these systems are adequately resourced, they can provide a meaningful foundation for the exercise of defence rights. However, across many jurisdictions, practitioners highlight persistent challenges related to funding, low remuneration, and limited incentives for lawyers to engage in criminal defence work, particularly in complex or cross-border cases. In more remote areas, these challenges are compounded by geographical barriers, with limited availability of lawyers able to attend police stations or detention facilities. As a result, access to a lawyer may depend not only on legal entitlement, but also on location and available resources.

Even where a lawyer is present, concerns remain as to whether access is always effective in practice. The Directive envisages legal assistance that allows for meaningful participation in proceedings, yet practitioners describe situations in which **contact between lawyer and client is limited in time or scope**. Meetings may take place shortly before hearings, sometimes for the first time in the courtroom, leaving little opportunity to prepare a defence. These constraints point to a broader distinction between formal access and effective legal assistance, which is not always reflected in practice.

Recent developments in the use of remote technologies have introduced both opportunities and challenges. In certain contexts, remote communication may

[8] Minutes from LEAP Consultation '*Access to a Lawyer*', 7th February 2026, LEAP Annual Conference 2026.

facilitate contact between lawyers and clients, particularly where distance or logistical barriers would otherwise prevent timely access. At the same time, practitioners raise concerns about the conditions under which such communication takes place. Questions arise regarding **confidentiality, the ability to confer privately during proceedings, and the broader impact of remote participation on the lawyer–client relationship**. While these tools may offer practical advantages, their use requires careful consideration to ensure that they do not undermine fundamental safeguards.

Cross-border proceedings continue to present additional complexities. The legal framework provides for the possibility of access to lawyers in both the issuing and executing states, reflecting the need for effective defence in multi-jurisdictional cases. In practice, however, the exercise of this right remains limited. Practitioners point to uncertainties regarding coordination between lawyers, the availability of legal aid, and the extent to which individuals are informed of their rights in cross-border contexts. While examples of **dual representation** exist, they appear to be the **exception rather than the rule**.

Finally, the question of remedies remains central to the effectiveness of the right. Although legal avenues exist to challenge violations, practitioners report that these do not always result in meaningful consequences within proceedings. Courts may acknowledge shortcomings without addressing their impact on the defence, and violations do not consistently lead to the exclusion of evidence or other corrective measures. This limits the practical enforceability of the right and reduces incentives for compliance at earlier stages.

Taken together, these findings suggest that important progress has been made at the level of legal recognition, but that significant challenges remain in ensuring consistent and effective implementation. The right of access to a lawyer is no longer absent from legal systems, but its realisation continues to depend on the conditions in which it is exercised. Ensuring that this right is practical and effective requires sustained attention to funding, infrastructure, and enforcement, so that legal guarantees are matched by everyday practice.

Pre-Trial Detention: Between National Practice and Missing EU Standards

Legal Expert Intervention Before The Supreme Court of Spain

As part of its strategic litigation work on pre-trial detention, Fair Trials, together with the European Criminal Bar Association, submitted a written legal expert opinion before the Spanish Supreme Court addressing the issue of compensation for individuals who have been held in pre-trial detention and subsequently acquitted.

The intervention builds on long-standing concerns regarding the consequences of the overuse of pre-trial detention and the lack of effective remedies for those wrongfully deprived of liberty. While Spanish law recognises a right to compensation following acquittal or dismissal of proceedings, the framework remains largely underdeveloped in practice. In particular, there is no structured or objective system for calculating compensation, with awards determined on a case-by-case basis by reference to evolving judicial criteria.

The submission highlights that such an approach risks undermining legal certainty and predictability, as similarly situated individuals may receive significantly different levels of compensation. This stands in contrast to other areas of law in Spain, where structured systems exist to ensure consistency in the assessment of damages. The absence of clear benchmarks in the context of pre-trial detention creates a risk that compensation may be inadequate or symbolic, failing to reflect the seriousness of the harm suffered.

Drawing on European human rights standards, the intervention emphasises that compensation must be "practical and effective" rather than theoretical. Under Article 5(5) of the European Convention on Human Rights**, individuals who have been unlawfully deprived of liberty must have access to compensation that is proportionate to the violation, including both material and non-material harm**. The case-law of the European Court of Human Rights further makes clear that compensation should reflect not only financial loss, but also the distress, anxiety and reputational damage associated with detention.

The comparative analysis presented to the Court illustrates that European systems adopt a range of approaches to compensation, from fixed daily rates to more flexible, discretionary models. While no single model is required, the intervention argues that systems relying exclusively on judicial discretion risk inconsistency, while rigid tariff-based systems may fail to capture individual harm. A structured approach combining objective baseline criteria with judicial discretion is therefore presented as a more balanced solution.

Beyond the technical question of calculation, the submission also raises broader concerns about the role of compensation in safeguarding fundamental rights. Effective compensation mechanisms are not only a form of redress, but also an essential element of accountability in systems where pre-trial detention is frequently used. Where compensation is inadequate or unpredictable, it risks weakening the incentive for authorities to apply detention as a measure of last resort.

The intervention before the Spanish Supreme Court reflects a wider advocacy priority: **ensuring that the consequences of unjustified pre-trial detention are properly recognised and remedied**. As discussions on detention standards continue at EU level, the development of effective and fair compensation systems remains a key component of a rights-compliant approach to pre-trial detention.

Arresting Persons With Mental Disabilities

The treatment of persons with mental disabilities during arrest procedures remains an area where legal safeguards and operational practices are often insufficiently developed. Litigation within the LEAP network reveals a consistent concern: while general principles such as necessity, proportionality and respect for human dignity are widely recognised, **specific guidance on how these principles should be applied in practice is frequently lacking**.

Across jurisdictions, there is no consistent approach to key questions such as whether police should defer intervention pending medical assistance, how to respond to passive resistance, or what limitations should apply to the use of force. In many systems, police officers retain broad discretion, with limited training or guidance on engaging with individuals experiencing mental health crises.

Some jurisdictions provide partial safeguards. In **Germany**, for example, the principle of proportionality requires that officers prioritise de-escalation and low-intensity measures before resorting to force, with a higher threshold applied due to the vulnerability of the individual. In **Italy**, interventions involving persons with mental disabilities are formally framed as healthcare measures, requiring the involvement of medical professionals and placing strict limits on coercive practices, including the prohibition of restraint techniques that may endanger life. In the **United Kingdom**, more detailed guidance exists through the interaction between policing powers and mental health legislation, including a greater emphasis on multi-agency responses.

However, these examples remain uneven and, in many cases, are not systematically reflected in practice. In several jurisdictions, including Bulgaria, there is no clear obligation for police to assess the mental condition of the individual prior to arrest. In others, including **Greece**, while legal principles provide for minimal use of force and respect for dignity, reports indicate a gap between the legal framework and operational reality.

The absence of clear and binding standards is particularly concerning in light of documented cases of excessive use of force, including incidents resulting in serious injury or death. The use of coercive measures such as pepper spray or restraint techniques continues to raise significant human rights concerns, particularly where individuals do not pose an immediate threat.

These findings point to a broader structural issue: **the lack of specialised procedures for vulnerable individuals within general policing frameworks**. While some reforms are emerging, including the development of specialised crisis response mechanisms, these remain limited in scope.

The experience shared by practitioners suggests a need for clearer standards and guidance at both national and European level, ensuring that the arrest of persons with mental disabilities is conducted in a manner that prioritises de-escalation, medical intervention, and the protection of human dignity.

Pre-Trial Detention and the High-Level Forum on the Future of EU Criminal Justice: A Missed Opportunity

Pre-trial detention has been a central focus of Fair Trials' advocacy at EU level, reflecting longstanding concerns about its overuse and the absence of effective safeguards. Research consistently shows that detention is not applied as a measure of last resort, but rather as a default response in many jurisdictions, often justified on broad and loosely applied grounds such as flight risk.

Within the context of the High-Level Forum on the Future of EU Criminal Justice, Fair Trials, together with partner organisations, called for decisive action to address these systemic issues. The advocacy focused on the need to establish **binding EU minimum standards** on pre-trial detention and detention conditions, alongside stronger procedural safeguards and monitoring mechanisms.[9]

However, the discussions at the High-Level Forum revealed a clear divide between stakeholders. While practitioners, academics and civil society emphasised the need for legislative intervention, Member States largely opposed the adoption of binding rules, favouring instead non-legislative measures and improved implementation of existing standards.

This position was ultimately reflected in the outcome of the Forum. [10] The final discussions confirmed a preference for soft-law approaches, such as guidelines and best practices, rather than the development of binding EU legislation on pre-trial detention. At the same time, the evidence presented during the Forum highlighted persistent structural problems, including the overuse of detention, discriminatory impacts on certain groups, and continued shortcomings in detention conditions.

This divergence between identified problems and proposed solutions represents a significant missed opportunity. The reliance on **non-binding measures risks perpetuating the status quo, particularly given the limited impact of previous recommendations in this area**. Without enforceable standards, the application

[9] See Annex Contribution to High-Level Forum for the Future of Criminal Justice, page 36.

[10] European Commission, Report of the High-Level Forum on the Future of EU Criminal Justice, 1 December 2025.

of pre-trial detention will continue to vary widely across Member States, undermining both fundamental rights and mutual trust within the EU.

From an advocacy perspective, the outcome of the High-Level Forum underscores the need for continued engagement at EU level. While the Forum has provided an important platform for dialogue, it has not yet delivered the level of ambition required to address the systemic issues identified. Ensuring that **pre-trial detention is genuinely used as a measure of last resort remains a key priority** for future reform efforts.

Judicial Cooperation

Judicial Cooperation at the High-Level Forum: Persistent Gaps in Safeguards

The discussions within the High-Level Forum also extended to the functioning of judicial cooperation mechanisms, where Fair Trials and its partners have consistently advocated for a stronger integration of fundamental rights within the EU's judicial cooperation framework. In particular, Fair Trials has emphasised the need to ensure that instruments such as the European Arrest Warrant operate within clear limits, including a robust proportionality assessment and greater use of alternatives to detention in cross-border cases.[11]

The outcome of the Forum shows a clear reluctance to move in that direction.[12] While there was broad recognition of practical problems in how existing instruments operate, Member States did not support the introduction of new binding rules. Instead, the focus remains on improving practice through guidance, training and exchanges between practitioners. Calls from defence lawyers, civil society and academia for clearer safeguards—particularly in relation to proportionality, defence rights and the use of coercive measures in cross-border proceedings—were not taken forward.

This leaves a clear imbalance in the development of EU criminal justice. Efforts to strengthen cooperation continue, but without corresponding progress in

[11] Fair Trials, Protecting fundamental rights in cross-border proceedings: Are alternatives to the European Arrest Warrant a solution? (2021).
[12] European Commission, Report of the High-Level Forum on the Future of EU Criminal Justice, 1 December 2025.

safeguarding rights. As a result, many of the structural problems identified in practice remain unresolved, raising ongoing concerns about whether the current framework can deliver fair outcomes in cross-border cases.

Cross-Border Evidence: A System without Common Rules

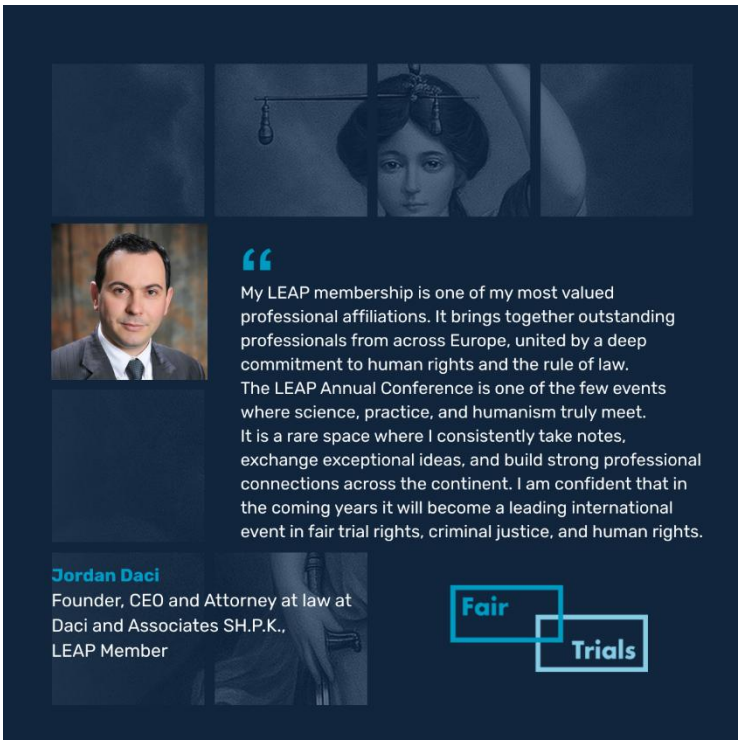
The increasing reliance on cross-border evidence in EU criminal proceedings has exposed a fundamental gap at the heart of the current framework: **the absence of harmonised rules governing how evidence is gathered, shared, and assessed**. While judicial cooperation mechanisms have expanded significantly, the safeguards applicable to evidence circulating across borders have not kept pace.

This gap is not theoretical. It is reflected both in Fair Trials' engagement with EU policy processes, including its submission to the European Commission's consultation on the European Investigation Order (EIO) revision, and in the experience shared by practitioners across jurisdictions.[13] Evidence gathered through complex, multi-stage processes involving several countries is increasingly used in domestic proceedings, often without full visibility over how that evidence was obtained. Defence lawyers are frequently presented with the **final "product" of earlier investigative steps**, with limited or no access to the underlying data or the processes through which it was generated. This creates a structural imbalance, where the ability to challenge the reliability and legality of evidence is significantly constrained.

A central concern is the growing tendency to rely on assumptions of reliability based on mutual trust, rather than on effective scrutiny. Courts may accept evidence gathered in another Member State without fully examining whether it was obtained in compliance with fundamental rights. As highlighted in Fair Trials' input to the European Commission on the future of the EIO, this approach risks **reversing the logic of fair trial protections by presuming the validity of evidence**

[13] Fair Trials, Fair Trials' response to the European Commission call for evidence (February 05, 2026).

and placing the burden on the defence to demonstrate illegality—often without access to the information needed to do so.



Practitioners' experiences further illustrate how this imbalance operates in practice. Defence lawyers reported being asked to advise or represent clients in proceedings based on evidence transmitted through an EIO without access to the underlying case file, making it impossible to effectively prepare a defence. In some cases, even when procedural avenues formally exist to challenge evidence, these are rendered ineffective in practice due to a lack of information, limited access to foreign legal systems, or the absence of legal aid for cross-border challenges. [14]

At the same time, procedural opportunities to challenge such evidence are limited. The defence is typically excluded from the "upstream" stages of evidence gathering, including the issuance and execution of EIOs. By the time evidence reaches the trial stage, it is often too late to effectively contest its origins. Even then, courts may decline to engage with challenges, citing a lack of proof of irregularity, despite the structural difficulties faced by the defence in accessing relevant information.

These concerns are compounded by broader policy developments at EU level. Proposals aimed at facilitating access to data for law enforcement risk further expanding cross-border evidence flows without addressing the underlying safeguards. As highlighted by Fair Trials, there is a risk that efficiency-driven reforms prioritise access to data while treating fundamental rights as a

[14] Minutes from LEAP Consultation '*Videoconferencing and European Investigation Order*', 7th February 2026, LEAP Annual Conference 2026.

secondary consideration. In this context, the absence of common evidentiary standards becomes even more problematic.[15]

The High-Level Forum on the Future of EU Criminal Justice acknowledged some of these tensions, including the lack of clarity around evidentiary standards and defence rights in cross-border proceedings. However, it did not lead to concrete proposals for binding rules. Instead, the discussions reflected strong opposition from Member States to EU-level regulation in this area, with a preference for maintaining national autonomy and relying on existing case law. This position was ultimately reflected in the outcome of the Forum, which did not identify legislative action on evidence as a priority.

This leaves a significant gap in the EU's criminal justice framework. As cross-border investigations become more complex and data-driven, the lack of common rules on evidence risks undermining both fairness and mutual trust. Without clear standards on admissibility, disclosure, and remedies, there is a growing risk that **evidence circulates more easily than the safeguards needed to assess it**.

NATIONAL DEVELOPMENTS: THE EXAMPLE OF GERMANY

Recent developments in Germany illustrate how these broader concerns are beginning to materialise in practice. Cases involving access to encrypted data and biometric unlocking of devices have raised important questions about the limits of investigative powers and the protection of fundamental rights.

German courts have been confronted with situations in which individuals are compelled to unlock digital devices using biometric features, such as fingerprints. These cases raise complex legal questions, including whether such measures amount to a form of coercion and how they relate to the privilege against self-incrimination. At the same time, they highlight a broader trend towards expanding investigative powers in response to technological developments.

These issues do not arise in isolation. They are closely linked to wider EU-level discussions on access to data, including initiatives aimed at facilitating law enforcement access to encrypted communications and digital evidence. As noted

[15] Fair Trials, Fair Trials Europe raises concerns on the Roadmap for effective and lawful access to data for law enforcement (23 July 2025).

by Fair Trials, such initiatives risk creating **new avenues for evidence gathering without corresponding safeguards**, particularly where they rely on intrusive techniques or operate across jurisdictions.

From a cross-border perspective, the implications are significant. Evidence obtained through coercive or intrusive methods in one Member State may be used in proceedings in another, even where the legality or proportionality of those methods would be questioned domestically. In the absence of common standards, there is a risk that differences in national approaches are effectively bypassed through cooperation mechanisms.

The German example therefore illustrates a broader point: **the challenges posed by new forms of evidence are not confined to individual jurisdictions**, but are amplified in a cross-border context. Without clearer rules at EU level, these developments risk further widening the gap between investigative powers and procedural safeguards. **German Courts v. EU-Standards – The question of breaking down biometric protections by force.**[16]

Encrypted Communications and Cross-Border Evidence: Third-Party Intervention in the EncroChat And Sky ECC Cases

The challenges surrounding cross-border evidence are particularly visible in cases involving encrypted communications, such as EncroChat and Sky ECC. These cases have become emblematic of a new model of law enforcement cooperation, characterised by large-scale data collection, cross-border sharing, and subsequent use in criminal proceedings.

In its third-party intervention before the European Court of Human Rights in *Silgir v Germany (No 2)*, Fair Trials highlighted the systemic issues raised by these practices. The cases involve situations where one state conducts extensive data collection—often on a bulk basis—before sharing the resulting data with other states, which then use it as evidence in criminal trials.[17] This model raises several fundamental concerns.

[16] By Prof. Dr. Carsten Momsen and Miriam Süttmann for Fair Trials, German Courts v. EU-Standards – The question of breaking down biometric protections by force (2 February 2026).

[17] European Court of Human Rights, Application no. 22234/25 Murat SILGIR against Germany (18 July 2025).

First, the initial data collection is often **broad and indiscriminate**, based on assumptions about the criminal nature of entire user groups rather than individual suspicion. This challenges established principles of necessity and proportionality, particularly in the context of surveillance and interception of communications.

Second, there is a significant **lack of transparency regarding how the data was obtained and processed**. By the time the evidence reaches the trial stage, it has typically undergone multiple stages of transformation across different jurisdictions. The defence and the courts are left with a partial and often simplified representation of the original data, without access to the underlying material needed to verify its accuracy and reliability.

Third, the reliance on **mutual trust between Member States** plays a central role in limiting scrutiny. Courts in the trial state may consider themselves unable, or not required, to examine the legality of the initial data collection in another jurisdiction. This creates a situation in which potential violations of fundamental rights at the "source" stage are not effectively reviewed at any point in the process.

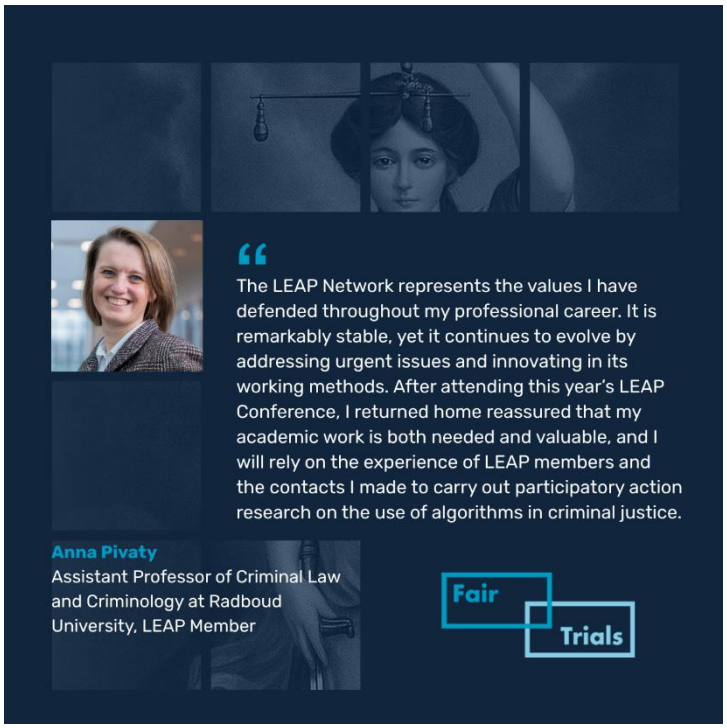
These issues have direct implications for the fairness of criminal proceedings. The inability of the defence to access raw data or to challenge the full chain of evidence raises serious concerns about equality of arms. As highlighted in the intervention, the evidential material presented in court may consist of processed outputs, such as spreadsheets, rather than original data, making independent verification difficult or impossible.

More broadly, these developments point to a **structural shift in criminal justice**. As cross-border cooperation becomes more data-driven, traditional safeguards, based on territoriality, judicial oversight, and adversarial testing of evidence, are increasingly strained. The risk is the emergence of a system in which evidence can be generated and circulated across borders with limited accountability, and where the protection of fundamental rights depends on fragmented and inconsistent national responses.

From a policy perspective, these cases underline the urgency of addressing the regulatory gap at EU level. Without clear and enforceable standards governing the collection, sharing, and use of cross-border evidence, there is a risk that **the expansion of investigative powers will outpace the development of safeguards**,

with long-term consequences for the fairness and legitimacy of criminal proceedings across the Union.

Extradition and the European Arrest Warrant: Practice Outpacing Safeguards



Extradition and surrender procedures remain central to judicial cooperation in criminal matters. However, **the expansion and routine use of these tools is not matched by corresponding safeguards,** particularly in complex cross-border situations.

The European Arrest Warrant (EAW), designed to streamline surrender within the EU, continues to raise fundamental questions in practice. Discussions among practitioners show that the system is increasingly shaped by case law developments that prioritise the effectiveness of surrender mechanisms, sometimes at the expense of legal certainty and individual rights.

Recent jurisprudence has clarified that even where an executing state refuses to surrender an individual and proceeds to enforce a sentence domestically, this does not necessarily prevent the issuing state from maintaining or reactivating the EAW.[18] This creates a situation in which individuals may remain exposed to repeated or prolonged surrender proceedings, despite having already served all or part of a sentence elsewhere. The implications for the principle of *ne bis in idem* and for legal certainty are significant.

Practitioners report that this evolving framework risks producing outcomes that are difficult to reconcile with basic fairness. Individuals may serve sentences

[18] CJEU judgment in Case C-305/22 (Judgment of 4 September 2025).

under one legal system, only to face further enforcement action in another, while differences in how sentences are executed, such as the use of probation or alternative measures, are not consistently recognised across jurisdictions. This reflects a broader structural issue: **mutual recognition operates effectively when it facilitates enforcement, but less so when it comes to recognising more rights-protective or lenient approaches adopted by other Member States**.[19]

At the same time, the system continues to be used in cases where its necessity is questionable. LEAP discussions highlight examples of **EAWs issued for minor offences or for the enforcement of relatively short sentences**, including cases where less intrusive alternatives could have been pursued. These practices contribute to **unnecessary detention, disproportionate interference with individuals' lives, and increased pressure on judicial systems.**

From a policy perspective, these developments point to a need to revisit the balance underpinning the EAW system. While the objective of avoiding impunity remains important, it should not override fundamental principles such as proportionality, legal certainty, and the right to rehabilitation in the country where a person has established social ties.

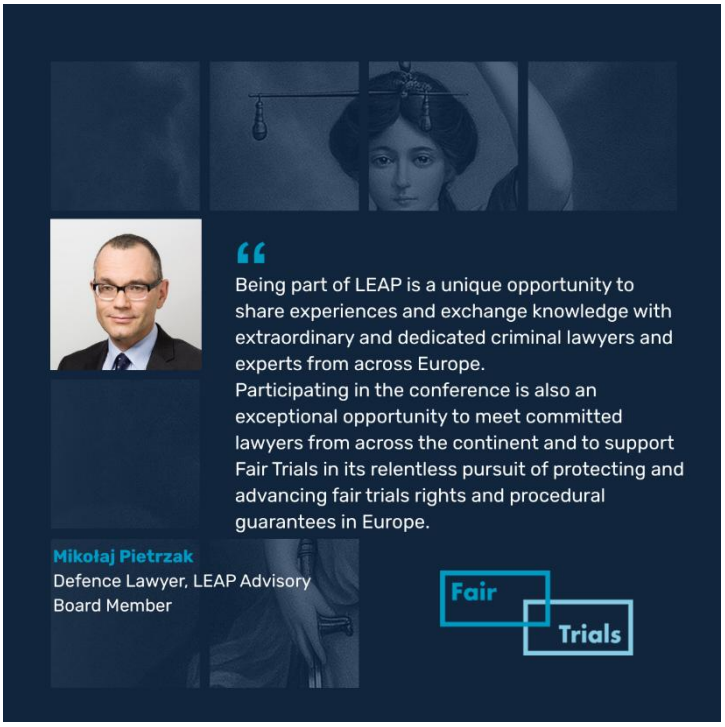
EXTRADITION IN PRACTICE: SPOTLIGHT ON ALGERIA AND RUSSIA

Beyond the EU framework, extradition to third countries continues to raise serious human rights concerns, particularly in cases involving jurisdictions where fair trial guarantees cannot be assured. Requests brought before LEAP members illustrate the extent to which courts across Europe are grappling with **inconsistent standards and high evidentiary thresholds when assessing risk.**

In cases involving extradition to Algeria, practitioners raised concerns about extradition following convictions delivered in absentia. While some jurisdictions, such as **Spain**, require diplomatic assurances guaranteeing a retrial, the effectiveness of such assurances remains uncertain in practice. Comparative input from practitioners indicates a growing recognition that a mere formal right to request a retrial is insufficient. Instead, the right must be automatic and capable

[19] Minutes from LEAP Consultation '*EAW, transfer of sentences and ne bis in idem*', 7th February 2026, LEAP Annual Conference 2026.

of ensuring a full reconsideration of both facts and law, in line with established European Court of Human Rights case law.



These cases highlight a broader issue: the reliance on assurances from requesting states without effective mechanisms to verify their implementation. In practice, courts may accept such assurances despite limited evidence that they will be honoured, placing individuals at risk of unfair proceedings.

The situation is even more pronounced in cases involving extradition to Russia. Since the invasion of Ukraine and Russia's departure from the Council of Europe framework, many jurisdictions have effectively halted or severely restricted extradition. Courts in countries such as **Bulgaria, Italy** and **Romania** have relied on the absence of Convention protections and broader human rights concerns to refuse requests. In other jurisdictions, such as **Poland** or **Portugal**, extradition is not formally suspended but has become highly unlikely in practice due to the elevated risk threshold.

However, approaches remain inconsistent. In some cases, courts continue to apply a strict evidentiary test, requiring individuals to demonstrate a "real risk" of ill-treatment through detailed and specific evidence. This creates a high barrier, particularly where access to reliable information about conditions in the requesting state is limited. The result is a fragmented landscape, where protection against human rights violations depends heavily on the jurisdiction in which the case is heard.

The Risk of Instrumentalisation

Recent cases also point to a growing concern about the instrumentalisation of judicial cooperation mechanisms for political purposes. Proceedings involving

requests from Kazakhstan, including the case of Botagoz Jardemalie, illustrate how cooperation tools can be used in ways that raise serious doubts about their underlying motivations. Belgian courts have recognised the **politically motivated nature of certain requests**, highlighting the need for rigorous scrutiny in cases where there is a risk of abuse.[20]

Similar concerns arise in other contexts. The European Arrest Warrant issued against Tommy Olsen, founder of Aegean Boat Report, has raised questions about the use of cooperation tools in situations involving **humanitarian activity and freedom of expression**, further illustrating the risk that such mechanisms may be used in ways that go beyond their intended purpose.[21]

These developments reinforce a key concern: existing frameworks do not always provide sufficient safeguards against the misuse of extradition and cooperation mechanisms. While courts can and do intervene in individual cases, the absence of clearer standards at EU level means that protection remains uneven and reactive rather than systemic.

Taken together, these examples point to a broader structural problem. Extradition and surrender mechanisms are increasingly used across a wide range of cases, including complex and sensitive situations involving human rights risks, yet the safeguards governing their use remain fragmented and, in some areas, underdeveloped.

Fair Trials has consistently argued that extradition should be treated as a measure of last resort, used only where less intrusive alternatives are not available. This includes ensuring that:

- individuals are not surrendered where there is a real risk of human rights violations;
- extradition is not used for minor offences or in a disproportionate manner;
- proceedings are sufficiently advanced before surrender is sought;
- and individuals have access to effective legal remedies in both jurisdictions.

[20] Fair Trials, Belgian Court of Appeal Confirms Politically Motivated Nature of Kazakhstan's Mutual Legal Assistance Request in the Jardemalie Case (14 January 2026).
[21] Fair Trials, A European Arrest Warrant has been issued against Tommy Olsen, founder of Aegean Boat Report (20 March 2026).

Current practice suggests that these principles are not yet fully reflected in the operation of the system. Instead, there is a risk that **efficiency and enforcement considerations continue to drive decision-making**, while safeguards are applied unevenly and often depend on the ability of individuals to meet high evidentiary thresholds.

Impact of the Network

Throughout 2025, LEAP has continued to demonstrate the power of collective expertise in shaping a fairer European criminal justice system. Through **LEAP-wide and national consultations,** practitioners' experiences have been brought to the forefront, monitoring how procedural rights and judicial cooperation instruments function in practice, with a particular focus this year on the right to interpretation and translation. These insights have not remained on paper; they have **directly informed policy debates at EU level**, contributing to discussions on the future of the European Investigation Order, the EU's digital strategy, and initiatives on law enforcement access to and retention of data.

At the same time, LEAP has ensured that the voice of practitioners reaches the courts, supporting **strategic litigation before the European Court of Human Rights**, including in cases on encrypted communications, and **assisting national courts** such as the Italian Constitutional Court and the Spanish Supreme Court **with EU law expertise** grounded in practice.

Beyond its outputs, LEAP represents something more fundamental: a growing community of practitioners committed to defending fundamental rights in criminal justice. It provides **a space** where experience is shared, partnerships are built, and **common challenges are turned into collective advocacy**. This spirit is most visible at the LEAP Annual Conference, where a diverse network of lawyers, academics and civil society comes together not only to exchange knowledge, but to shape the future of EU criminal law.

At a time when criminal justice systems are under increasing pressure, LEAP shows that meaningful change is possible when those working on the frontlines are heard. By connecting practice with policy, and national realities with European action, the network continues to play a vital role in ensuring that fairness, rights and the rule of law remain at the heart of EU criminal justice.

We extend our sincere thanks to all LEAP members for their continued commitment, engagement and invaluable contributions throughout this work.

CONTRIBUTION TO HIGH-LEVEL FORUM FOR THE FUTURE OF CRIMINAL JUSTICE

This is a joint statement made by Fair Trials together with the contribution of Associazione Antigone, the European Prison Litigation Network, the Helsinki Foundation for Human Rights, the Hungarian Helsinki Committee, a network of civil society organisations which share a common interest in improving the right to a fair trial in accordance with international standards. We believe that fair trial rights are one of the cornerstones of a just society: they prevent lives from being ruined by miscarriages of justice and make societies safer by contributing to transparent and reliable justice systems that maintain public trust.

We welcome the debates organised in the context of the High-Level Forum on the Future of Criminal Justice. We believe it is essential to develop a common vision on the future of criminal justice and would like to renew our interest in participating in these discussions.

We would also like to submit a few remarks on some of the key areas which are being discussed and to share some of the insight we have gained through research, through working with the justice system, with defendants, victims and lawyers.

Our contribution focuses on four key areas:

1. Procedural rights and detention conditions
2. Judicial Cooperation and Mutual Recognition in Criminal Matters
3. EU agencies and bodies
4. Digitalisation of EU criminal justice

HUNGARIAN HELSINKI COMMITTEE

ANTIGONE

HELSINKI FOUNDATION FOR HUMAN RIGHTS

EUROPEAN PRISON LITIGATION NETWORK

1. Procedural rights and detention conditions

1.1. Pre-trial Detention and Material Detention Conditions

We reaffirm the importance of EU intervention to address the overuse of pre-trial detention, to take decisive steps to:

- Ensure the implementation of existing standards on detention conditions through the development of prisoners' procedural rights.
- Foster strong, independent monitoring bodies for detention conditions.
- Establish clearer and binding EU minimum standards for detention conditions.

Unfortunately, the reality is that in Europe, **pre-trial detention** is not used as a means of last resort, and there are systematic failures in ensuring appropriate standards of protection for the presumption of release, equality of arms, and proportionality.[1]

Research shows that in deciding over the use of pre-trial detention, national courts generally look at the risk of reoffending (90% in Austria) or the risk of absconding (90% in Germany). In determining flight risk, countries generally look at community ties, integration and the requirement of a fixed address which automatically excludes categories of individuals. Foreign nationals, those who are homeless and of no fixed abode, and individuals of limited means and resources or socio-economic circumstances in general are excluded from meeting this criterion and are more likely to automatically face pre-trial detention. This is contrary to the ECtHR standards where the Court has found that the 'mere absence of a fixed residence does not give rise to a danger of flight.[2] For example, in Austria out of 59 accused who were deemed to be a Flight Risk, only 5 were Austrian nationals.[3] In France, persons born abroad are five times more likely to be placed in PTD. These countries are far from being the exception – Belgium,

[1] Fair Trials, *'A Measure of Last Resort? The practice of pre-trial detention decision making in the EU'* (2018)
[2] ECtHR, Sulaoja v. Estonia, *Application no. 55939/00*
[3] Fair Trials, *Assessing Flight Risk in pre-trial detention decision-making: a European comparative study*, June 2024

Luxembourg, Greece and Malta also have disproportionately high rates of non-nationals in pre-trial detention.[4]

With respect to **detention conditions**, unfortunately this continues to be an issue across the EU, with detrimental effects on the operation of the European Arrest Warrant. [5] According to the latest comparable data available, [6] prison overcrowding remains an issue in 11 EU countries.[7] In five of these countries, the European Court of Human Rights (ECtHR) has found overcrowding to be of a structural nature requiring reforms "embedded in a rational and coherent penal policy, to identify and address [its] different root causes".[8] Furthermore, both ECtHR case law and reports from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) regularly highlight violations of prisoners' fundamental rights in areas as diverse as access

[4] Fair Trials, *Reinforcing procedural safeguards and fundamental rights in European Arrest Warrant ('EAW') proceedings*' (2021) *'Disparities and discrimination in the European Union's criminal legal systems'* (2021)'*Overuse of Detention in Cross-Border Proceedings'*, *'Pre-Trial Detention Rates and the Rule of Law in the European Union'* (2021)

[5] See in particular CJEU, Pál Aranyosi and Robert Căldăraru, *Joined Cases C-404/15 and C 659/15 PPU*; CJEU, E.D.L., *Case C-699/21*; CJEU, GN, *Case C-261/22*.

[6] Marcelo F. Aebi & Edoardo Cocco, *Prisons and Prisoners in Europe 2024: Key Findings of the SPACE I survey* (2025).

[7] In decreasing order of prison density, these countries are Slovenia (134 prisoners per 100 prison places as of 31 January 2024), Cyprus (132), France (124), Italy (118), Romania (116), Belgium (113), Croatia (110), Ireland (105), Sweden (105), Hungary (104), Finland (103).

[8] Quote from the Decision of the Committee of Ministers of the Council of Europe on the execution of the case Petrescu v. Portugal (19 September 2024). The ECtHR has found overcrowding to be of structural nature in Romania (Rezmiveș and others v. Romania, *Application no. 61467/12*), France (J.M.B. and others v. France, *Application no. 9671/15*), Belgium (Vasilescu v .Belgium, *Application no. 64682/12*), Hungary (Varga and others v. Hungary, *Application no. 14097/12*), Italy (Torreggiani and others v. Italy, *Application no. 43517/09*, this case was closed in 2016 but recent figures show that Italian prisons are experiencing severe overcrowding with 62445 prisoners for 51280 prison places as of 30 April 2025 – see Antigone, *Ventunesimo rapporto sulle condizioni di detenzione* (2025)). Although Portugal's prison density rate was below 100 as of 31 January 2024 (96 prisoners per 100 prison places), prison overcrowding has also been identified as structural in this country (Petrescu v. Portugal, *Application no. 23190/17*) and general measures are being monitored by the Committee of Ministers.

to healthcare,[9] disciplinary sanctions,[10] prison regime,[11] security measures,[12] life sentences,[13] private and family life,[14] transfers,[15] political rights,[16] social rights[17] and ill-treatment.[18]

The persistence of prisoners' rights violations, despite the development of prison standards over the past decades, requires decisive action from the European Union to guarantee prisoners' access to justice. Strengthening prisoners' procedural rights, and specifically their access to a lawyer through legal aid,

[9] ECtHR, Lombardi v. Italy, *Application no. 80288/13* : the case concerned a prisoner with orthopaedic and neurological diseases (recurrent spinal disc herniation, spinal arthritis and acute lumbar pain) resulting in impaired mobility, maintained in detention, where he could not receive prescribed physiotherapy. Regarding mental healthcare, see ECtHR, B.D. v. Belgium, *Application no. 50058/12*.

[10] CPT, Report on visit to Slovakia, CPT/Inf (2025) 09, 10 April 2025, especially §§ 93-94, where the Committee found that the maximum duration of uninterrupted solitary confinement was of 21 days, way above the CPT standard of a maximum of 14 days, and that acts of self-harm by prisoners were considered a disciplinary offence, resulting in sanctions for those who had harmed themselves, when a therapeutic approach should have been favoured. See also ECtHR, Schmidt and Šmigol v. Estonia, *Application no. 3501/20*.

[11] ECtHR, Morabito v. Italy, *Application no. 4953/22*: the case concerned the extension of a prisoners' special restrictive prison regime despite his long incarceration, advanced aged and cognitive decline (Alzheimer's disease and vascular neurocognitive disorder). See also Fernandes v. Portugal, *Application no. 33023/17*.

[12] ECtHR, Adamčo v. Slovakia (No. 2), *Application no. 55792/20*: the case concerned a prisoner who had been systematically subjected to thorough strip searches over a long period of time, despite a complex set of other security arrangements being in place and there being no convincing security need for this treatment. Importantly, the case also concerned the inspection by prison officers of the applicant's documents on the occasion of consultations with his lawyers in prison, without reasons suggesting an abuse in the privileged channel of communication with his lawyers.

[13] See the recent Decision of the Committee of Ministers of the Council of Europe on the execution of the case László Magyar v. Hungary group of cases (12 June 2025), concerning life sentences either without eligibility for release on parole ("whole life sentences") or with eligibility for release on parole ("simple life sentences") after a waiting period above the ECtHR standard of 25 years.

[14] Vidrean and Caloian v. Romania, *Applications nos. 39525/22 and 9286/23*: the case concerned a refusal by the prison administration to allow prisoners to attend the funerals of close family members. See also ECtHR, Takó and Visztné Zámbó v. Hungary, *Application no. 82939/17* concerning physical separations with a glass partition during prison visits.

[15] ECtHR, Wick v. Germany, *Application no. 22321/19* concerning the non-review of the merits of a prisoner's applications against his repeated transfers at short notice from one prison to another.

[16] ECtHR, Ursei v. Romania, *Application no. 9233/21* concerning a prisoner who was unable to vote in the legislative elections because he was serving a sentence in a prison situated outside the electoral constituency of his place of residence. See also the case of Bulgaria, where there is a statutory blanket ban on voting by prisoners (for a recent case, see ECtHR, Tingarov and others v. Bulgaria, *Application no. 42286/21*).

[17] CPT, Report on visit to Slovakia, op. cit, especially §§ 72 and 85 concerning the system of low wages and high deductions imposed on prisoners disproportionately limiting their net income, with detrimental effects i.a. on their access to healthcare.

[18] ECtHR, Maļinovskis v. Latvia, *Application no. 46084/19*: the case concerned an ineffective investigation into a prisoner's allegations of violence used against him by prison guards. See also Miljak v. Croatia, *Application no. 15681/18*.

would indeed enable them to make effective use of the legal remedies that have been put in place at the national level under the impulsion of the ECtHR case law. Currently, even when such remedies exist, their use is impeded in practice by a number of factors – from the limited legal literacy of the majority of the prison population, to their lack of access to essential pieces of evidence and expertise to substantiate their claims, and to their exposure to retaliation from the prison administration.[19]

Developing a legally binding EU instrument to reinforce and harmonise prisoners' procedural rights across the Union would create effective synergies with Council of Europe instruments. Furthermore, it could arguably be met with interest by EUMS as it would build on the precedent of the adoption of the procedural rights directives, and would have a positive impact on compliance with fundamental rights in prisons, without encroaching on the national penal and prison policies.[20]

1.2. Vulnerable Adults

We agree that individuals who are in a situation of vulnerability are increasingly impacted by digital vulnerabilities, in addition to more general vulnerabilities (such as intellectual or psychosocial disabilities) and that empirical research confirms that the existing soft law framework is inadequate for addressing related challenges.

We submit that binding legislation is needed to ensure that individuals in a situation of vulnerability can fully participate in the justice system. Such reforms

[19] European Prison Litigation Network, *White paper on access to justice for pre-trial detainees*, (2019)

[20] In reply to a 2021 non-paper of the European Commission envisaging the development of EU standards on detention conditions, Member States argued that "there is no need for additional legal instruments on minimum standards at EU level as these standards are already set out in various international fora" and that "the focus should [instead] be on a more effective application of existing standards, e.g. those laid down [by the CoE]" – see Council of the European Union, 3816th Council meeting, Home Affairs, 12574/21, 7 October 2021, quote p. 3. The adoption of Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions demonstrates both the persistence of fundamental rights violations in prison and the lack of political space to adopt a binding instrument in this area.

should build on the principles set in the Convention on the Rights of Persons with Disabilities (CRPD) to ensure equal access to justice for all.

Research shows that in many EU countries, the legal framework does not specifically include procedural accommodations for persons with disabilities. Nor do such legal frameworks provide for specific accommodations for accused or defendants with intellectual and/or psychosocial disabilities, in particular. For instance, legal frameworks in many EU countries often do not guarantee the possibility of the use of an intermediary in order to support the communication and decision-making of persons with intellectual and/or psychosocial disabilities involved in court proceedings. This has a serious impact on the right of defendants with disabilities to participate in court processes and curtails their rights significantly. [21]

Fair Trials has also conducted research that shows that all countries studied had close to no special procedural safeguards for defendants with disabilities. Where best practices were identified, these were isolated and anecdotal, and not as a result of systematised efforts to improve procedural safeguards through laws and policies.[22]

This was alco confirmed by research conducted in Bulgaria, Czechia, Lithuania, Romania, Slovakia, Slovenia, Spain and Portugal assessing the barriers defendants with intellectual and psychosocial disabilities face in the criminal justice system in accessing information, support and procedural accommodations that prevent them from participating, and the extent and manner in which law, policy, and/or practice (including promising practices) allow them to overcome these barriers, particularly through the provision of procedural accommodations.[23]

[21] Validity Foundation – Mental Disability Advocacy Centre and ICJ – International Commission of Jurists, **'Model Bench Book on the rights of persons with disabilities'** (2024)
[22] Fair Trials, *Study on Procedural Adjustments for Defendants with Cognitive Impairments, Neuro-Diverse Conditions, Mental Health Conditions'* (2020)
[23] Validity Foundation, *National briefing papers*, (2023)

Other research shows that there is a general lack of adequate mechanisms for early disability identification which may result in the denial of necessary support for equal access to justice. Also, persons with these disabilities often receive lengthy prison sentences due to unsuitable legislation and there is a general lack of post-release support tailored for persons with these disabilities, impacting reintegration prospects due to inadequate services and housing options.[24]

We therefore argue that there is a constant need to further improve the implementation and practical application of the Procedural Rights Directives, particularly in relation to vulnerable groups, including 'persons in crisis' (under the influence of alcohol or other psychoactive substances), members of discriminated groups (foreigners, ethnic minorities, and LGBTQIA persons) as well as women (for example in relation to abortion cases).

1.3. Procedural guarantees for children

There is an urgent need to strengthen procedural safeguards for children facing quasi-criminal (corrective) proceedings, as they currently lack the EU-level fair trial standards guaranteed in their cases. Despite the often-punitive nature of these proceedings, which can result in long-term deprivation of liberty, children are not afforded adequate legal protections or effective defence rights. The European Court of Human Rights has consistently treated such proceedings as "criminal" for Convention purposes [25], underscoring the need for stricter guarantees. Expanding procedural safeguards would help ensure that children's rights are respected, prevent disproportionate sentencing, and align national practices with European human rights standards.

1.4. Admissibility of Evidence

[24] Ludwig Boltzmann Institute of Fundamental and Human Rights, Justice For All. *Enhancing the Rights of Defendants and Detainees with Intellectual and/or Psychosocial Disabilities: EU Cross-Border Transfers, Detention and Alternative*, 2023,
[25] ECtHR, Adamkiewicz v. Poland, case no. 54729/00.

It is important to develop minimum standards on the exclusion of evidence, particularly when dealing with more obvious cases, for example where evidence is collected by using torture or inhumane treatment, entrapment or in violation of minimum procedural safeguards.

Although the exclusionary rule seems to be firmly established in most legal cultures, there are challenges concerning its application in law and practice, as international human rights law does not regulate in detail how the rules on the inadmissibility of torture-tainted evidence should operate in practice.[26] This is why we consider that strong exclusionary rules can be powerful tools in the fight against torture, especially if embedded in broader reform efforts aiming at removing the incentives for coercive investigation techniques and the current efforts towards the implementation of the Principles on Effective Interviewing for Investigations and Information Gathering (Méndez Principles).

Research shows that in the absence of clear regional standards on effective evidentiary remedies, there is an overreliance on the ECtHR to fill in the existing gaps in legislation and practice. However, in practice the case by-case overall fairness approach taken by the ECtHR can be too complex and unpredictable to provide a principled guidance for dealing with unlawful evidence. National legal systems give judges broad discretion to decide whether to admit unlawful evidence. In practice judges would look at 'substantive violations' or 'fundamental breaches' when deciding whether or not to rely on evidence. [27]

Furthermore, one cannot ignore the penal-populist approach adopted by some states that are trying to circumvent international standards and force national judges to use evidence whose legality is in doubt. Such measures were, for example, adopted in Poland, forcing judges to admit evidence obtained through crime.[28]

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[26] Ludwig Boltzmann Institute of Fundamental and Human Rights, *The admissibility of evidence tainted by torture and ill-treatment* (2022)
[27] Fair Trials, *Unlawful evidence in Europe's courts: principles, practice and remedies* October 2021
[28] Fair Trials, *Unlawful evidence in Europe's courts: principles, practice and remedies* October 2021, p 32

Therefore, we argue against having unlimited judicial discretion on the matter and propose a system of guided judicial discretion on the decision-making process concerning exclusion of evidence.[29]

1.5. Legal Professional Privilege

There is also a need to develop common EU rules on the protection of legal professional privilege (LPP). On this topic, a great starting point is the recently adopted Council of Europe Convention for the Protection of the Profession of Lawyer. But the convention has only been ratified by less than half of EU Member States.

There are several specific issues, for example in relation to ensuring client-lawyer privilege for consultations held through video-conference. There are also challenges whenever interpreters are involved as there are no specific obligations in respect to independence and impartiality of interpreters or minimum common qualification standards for interpreters.

In the case Case Pietrzak and Bychawska-Siniarska and Others v. Poland (applications nos. 72038/17 and 25237/18), where Fair Trials intervened as a third party, the European Court of Human Rights delivered a landmark judgment declaring that the secret surveillance and data retention practices under Poland's Anti-Terrorism Act violate citizens' right to privacy. The Court considered that the impugned legislation did not provide sufficient safeguards as concerned communications covered by legal professional privilege. All of these shortcomings led the Court to find that the national operational-control regime, taken as a whole, did not satisfy the requirements of Article 8 of the Convention.

2. Judicial Cooperation and Mutual Recognition in Criminal Matters

2.1. European Arrest Warrant

The European Arrest Warrant (EAW) is regarded as the flagship EU judicial cooperation measure. However, evidence shows that EAWs are used far more broadly than intended, and alternative measures seem to be underused. Our

[29] KU Leuven Report '*Streamlining the exclusion of illegally obtained evidence in criminal justice*' (2021)

research identified three main obstacles to the use of alternatives to detention in cross-border proceedings:[30]

- **Lack of mutual trust in alternative measures**: national authorities lack the trust necessary to ensure effective implementation of alternatives to detention in cross-border proceedings. Our research also shows that lack of trust comes from lack of knowledge about how systems function in other Member States, as well as a lack of institutionalised cooperation between judicial actors.
- **Incomplete legal frameworks**: Our research indicates that there are gaps in the EU legal framework, particularly in relation to the EAW. There is no legal obligation to consider the proportionality of a decision to issue an EAW which means that alternatives are not even considered. There are also gaps between the law and practice in the implementation of procedural rights.
- **Complexity of EU and domestic legal and institutional frameworks**: Each alternative is covered by a different legislative instrument and each instrument has its own set of conditions, time limits and grounds for refusal, making it difficult for practitioners to understand how the instrument works in their own country and in other countries.

The EU must act and provide EU Member States with a clear and precise common set of standards which aim to limit recourse to pre-trial detention as a measure of last resort. It is also important to adopt a clear proportionality test for the purposes of issuing an EAW with a clear legal obligation on issuing authorities to consider the availability of alternatives to the EAW. It is also important to promote the exchange of information between Member States, monitor the use of the EAW and alternative instruments, and to continuously monitor the implementation of the Procedural Rights Directives.

2.2. Remote participation by videoconferencing

[30] Fair Trials *Protecting fundamental rights in cross-border proceedings: Are alternatives to the European Arrest Warrant a solution?* (2021)

Videoconferencing is an instrumental tool in enabling access to justice and reducing trials in absentia, which poses a major problem in many members states. However, according to our research videoconferencing poses specific challenges in practice, particularly regarding a defendant's right to confidential communication with their lawyer before and during a hearing as well as in the context of pre-trial detention. Videoconferencing technology does not always allow for easy sharing and reviewing of evidence presented during a hearing. We stress that it is crucial that any decisions to introduce or expand the use of remote court hearings are informed by human rights concerns and accompanied by appropriate safeguards to protect the rights of defendants including vulnerable defendants and other defendants with special needs.[31]

2.3. Relationship and coherence between the various existing tools

Given the evolving body of EU criminal law on both procedural and material aspects we believe it would be important to bring together in a coherent, single and accessible form, all the EU Mutual Recognition Instruments and other relevant EU legislative instruments such as the Procedural Rights Directives.

2.4. Non-legislative measures to enhance the effectiveness of existing instruments

Besides current efforts meant to facilitate effective judicial cooperation, we believe it is also important to ensure further funding for research efforts, capacity-building and training looking at implementation of existing instruments. Recent funding calls steer away from research but we believe this is an essential element in ensuring effective transposition of criminal justice instruments.

3. EU agencies and bodies

3.1. Eurojust

[31] Fair Trials *Safeguarding the right to a fair trial during the coronavirus pandemic: remote criminal justice proceedings* (2022)

We recognize the important role Eurojust plays with respect to the EAW. We recommend expending on this role and further involving Eurojust in similar or further ways in the implementation of judicial cooperation instruments. There is a need for a focal point for these instruments that can guide and advise on judicial cooperation matters.

3.2. Europol

There are legitimate concerns about the expansion of Europol's mandate and the expansion of its operational activities. We have and continue to argue that any expanding role for Europol should come with solid transparency and oversight mechanisms. It is also crucial to develop effective safeguards that allow the fairness and reliability of evidence obtained by Europol to be challenged in court.[32]

4. Digitalisation of EU criminal justice

4.1. Cross-border videoconferencing

We believe it is important that the Commission develops common technical standards for videoconferencing equipment and develop common tools to be used for cross-border hearings. Poor sound and image can have a negative impact on effective participation and the quality of equipment used can have an effect on fair trial rights.

These standards and common rules could be partially the same for both civil and criminal matters but they should also include specific provisions which are inherent to the two areas of law.

4.2. The use of AI to facilitate criminal investigations and proceedings

[32] Fair Trials, Europol's expanding mandate: European Parliament must stand against unaccountable and discriminatory policing, 2022

While we recognize the potential of AI tools we stress the fact that there are serious risks of biased outcomes and discrimination resulting from the use of automated decision-making and Artificial Intelligence (AI) in criminal justice. This is why we consider that AI systems should be subjected to clear transparency and accountability standards and should be tested by an independent body before and post-deployment within criminal justice systems. Also, any predictive and risk-assessment AI tools targeting individuals should not infringe upon the presumption of innocence and we consider that AI systems which seek to profile, predict, assess risk or otherwise pre-designate an individual as a criminal before trial must not be allowed in criminal justice.[33]

With respect to real time biometric recognition programs, we want to flag that the use of this technology must also comply with the relevant ECtHR jurisprudence, particularly Glukhin v Russia, where the Court recognizes that facial recognition can be a highly intrusive measure, that may not correspond to a "pressing social need" and can be incompatible with the ideals and values of a democratic society governed by the rule of law, it may not be "necessary in a democratic society" and may lead to a violation of Article 8 of the Convention.[34]

We would also stress the importance of fundamental rights impact assessments (FRIAs) before deployment of any AI tools and beyond.

[33] Fair Trials, *Artificial intelligence (AI), data and criminal justice*
[34] ECtHR, Glukhin v Russia, *Application no. 11519/20*

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