



Welcome to the latest LEAP quarterly bulletin, which aims to provide you with an update on the network's work over the past few months, as well as broader developments in the world of criminal justice.

As ever, it's a long update, but you can jump to the different sections using the navigation below.

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FAIR TRIALS AND LEAP NEWS

LEAP Annual Conference 2019

The LEAP Annual Conference, held two weeks ago in Zagreb, was yet again an inspiring meeting of criminal justice experts across Europe. Thank you to everyone who came and contributed, the conference would literally be nothing without you. At least one LEAP member (but hopefully more), reported that they had come back with “so many ideas and full of motivation”. For those that were there, keep us in the loop with any concrete co-operations and work that does come out of the conference.

For everyone, you can read more about the event [here](#), and we'll also be sending round more information and follow up in the coming weeks, so keep an eye out for that.

LEAP Advisory Board meeting

It seems a while ago now, but earlier in the year we also held the annual LEAP Advisory Board meeting in Brussels on 25–26 January. The meeting helped set the agenda for the year ahead, including for the Annual Conference.

JUSTICIA statement on EU priorities

2019 is a big year for the EU with European Parliament elections in May and the appointment of a new Commission later in the year. As in previous election cycles, this presents a key window in which to seek to inform the EU's priorities in the area of criminal justice.

It is also taking place in a *challenging* political climate in Europe. Without wanting to be dramatic, the shared values that underpin the EU face unprecedented threat from populist, nationalist and anti-minority movements. The rule of law is in crisis in some Member States, notably Poland and Hungary. Governments are strangling independent civil society and free speech to prevent independent critique of and opposition to policies that violate human rights and the rule of law. The austerity agenda has starved investment in fair and effective criminal justice. Despite the significant progress that has been made, it is important that the EU institutions respond to these threats.

Working with JUSTICIA and LEAP, we have identified a few key points on which to focus and have produced a statement on future priorities for EU criminal justice, which you can download [here](#).

We want to see the following as priorities for the Commission and Parliament:

1. Effective implementation of the EU laws that have been introduced;
2. New legislation to finish what they started with the original roadmap;
3. The tackling of emerging issues and long-standing challenges like discrimination and trial waivers; and
4. An increase in the Commission's capacity, to help the above become a reality.

It would be great if you could share the statement on your own platforms, and while you're at it, why not ask others to share it too.

[New projects](#)

Fair Trials, working with various LEAP members, have been awarded two new EU projects:

The first project is 'Defence Rights in Evidentiary Procedures' (known as "DREP"), which is about giving teeth to the EU defence rights standards that LEAP have worked on for years. It will do this through building an evidence base for advocacy around strengthening the evidentiary remedies in Europe when these defence rights are breached.

The second project is 'Trial Waiver Systems in Europe' (known as "TWSE"), which is looking at the spread of plea bargaining practices across the EU and advocacy to ensure that early stage due process protections (now guaranteed by EU law – such as access to information) are being respected in this context. For more on our concerns about plea bargaining without safeguards you can read about our existing work on [the disappearing trial here](#).

If others have new projects, get in touch to tell us about them, especially if you think there is anything that LEAP can do to help with them.

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[Fair Trials staff updates](#)

It's another staff update, but happily its just announcing new arrivals.

The latest arrivals are Sheryl Adie, Financial Controller, based in London, and Isabel Roby, Legal and Policy Officer in Washington DC. Iva Petkovic, our new Campaigns and Networks Coordinator in Brussels will be starting in early April.

We are currently recruiting for an Office and Projects Administrator role in Brussels, so if you know anyone that might be suitable, please forward on [the job advert](#).

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CROSS-BORDER JUSTICE

European Arrest Warrant

Proportionality and decisions post *Celmer*

We had a couple of queries from LEAP members over the last quarter regarding European Arrest Warrant practice. We've collated the responses so that you can see what's happening in different Member States. The queries were:

Are you aware of cases (in national level or before the European Courts) where an EAW was rejected on the basis of the principle of proportionality? Read LEAP members' responses to this question [here](#).

*Were there any extradition judgments in your country which deal with the Polish "Celmer" point, i.e. Article 6 ECHR following the recent reforms which are post the decision of the CJEU in *The Minister of Justice and Equality v LM (Case C-216/18 PPU) [2019] 1 CMLR 18 (dated 25 July 2018) ("Celmer")*. Read the responses [here](#).*

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European Investigation Order

Is the EIO being used in place of the European Arrest Warrant?

We circulated a LEAP query concerning European Investigation Order practice:

- 1. Has the European Investigation Order (EIO) been used in your jurisdiction to replace an EAW, for sake of proportionality, or have you had experience with the EIO being used in addition, cumulatively with an EAW?*
- 2. Has any defence lawyer successfully requested an EIO in their jurisdiction? How has the possibility to request it (cf. Art. 1(3) of the Directive) been implemented into the national*

law?

3. Have you had any experience with regards to the specialty rule (see also comments from EJM on this at <https://www.ejforum.eu/cp/registry-files/3456/ST-14755-2018-INIT-EN.pdf>)?

4. Under which conditions can evidence obtained through an EIO be inadmissible in your jurisdiction?

Read responses to these questions [here](#).

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Exchange of electronic evidence

Negotiations continue on new e-evidence laws

Following on from Fair Trials' policy brief, which was produced with input from a number of LEAP members, we have published a consultation paper on cross-border access to electronic data. The paper outlines four key safeguards required to preserve the fundamental fair trial protections for people accused of crime: prior notification to the suspect, robust prior judicial authorisation procedure, meaningful remedies in the event of a trial, and effective and systemic oversight on the use of the measures by law enforcement authorities. You can read the consultation paper [here](#).

The documents have accompanied policy discussions that have taken place at a number of events: the Conference on Privacy and Data Protection (a world-leading annual multidisciplinary conference) at the end of January; a series of meetings organised by the Centre of European Policy Studies (CEPS); a roundtable organised by the European Commission, where Fair Trials was able to discuss directly with EU officials and provide feedback on the proposed laws; at an event in the UK on recent legal changes on obtaining evidence from the US; and at a workshop organised by INTERPOL (!) in the context of a project looking to create a secure platform for e-evidence exchange between judicial authorities.

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INTERPOL

[Advocating for further INTERPOL reforms](#)

Last month, we were pleased to see an increased recognition over the abuse of INTERPOL's systems, and the need for further reform when a new report was published by the European Parliament's Subcommittee on Human Rights (DROI). 'Misuse of Interpol's Red Notices and impact on human rights – recent developments', shows how despite INTERPOL's recent reforms, the abuse of Red Notices and Diffusions against refugees, human rights defenders, and critical journalists continues and calls for better implementation, more transparency, and further reforms. The study draws heavily on our own report, 'Dismantling the Tools of Oppression'. Read more about the report [here](#).

The recent case of Hakeem Al-Araibi was yet another example of the devastating impact of Red Notices and member countries' failure to take appropriate action to protect people vulnerable to abuse. Al-Araibi was arrested in Thailand in November on a Bahraini Red Notice, despite public information that he'd fled the country due to persecution. The case had intense coverage due to concerns that Australia (where he had refugee status) had facilitated his arrest. In the context of the case, we wrote to Australian Government Ministers criticising Australia's handling of the case and shared our report and recommendations with lawmakers who questioned the Australian NCB on their role in Al-Araibi's arrest. Read our letter to the Australian Minister for Foreign Affairs on Hakeem Al-Araibi's arrest [here](#).

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PRESUMPTION OF INNOCENCE

[Video on the presumption of innocence – help needed](#)

We want to make a short film about the presumption of innocence and its importance to justice in Europe, but we need your help. What we need at this stage is for LEAP members to film themselves saying some or all of the following sentences:

- Everyone, no matter who they are, or what they've been accused of, is innocent until proven guilty.
- Unfortunately, the presumption of innocence is under threat, now more than ever.
- Your guilt should be tested inside a courtroom, not outside of it – that's why courts exist.

- The idea that everyone is innocent until proven guilty is an important foundation of fair trials.
- From the very beginning the court should treat you as innocent, unless and until it can convincingly prove that you're guilty.

It doesn't need to be any big fancy production, just get someone to film you saying one or more of the sentences above (only request is that you film it landscape - so turn your phone sideways please!)

After you've filmed it, you can send it to Alex on whatsapp at +447980830157.

We'll then edit it together for a short film to be used online to raise awareness of this important right which risks being forgotten.

Pre-trial detention

[In our new short film, lawyers explain the barriers to legal assistance in Europe](#)

We have produced a new short film where criminal defence lawyers from across Europe explain the challenges of doing their job when their clients are in pre-trial detention. The film was produced as part of “Effective Legal Assistance in Pre-Trial Detention Decision-Making”, an EU-wide project which aims at improving the quality of pre-trial detention decision-making by addressing existing legal, procedural and cultural barriers to the effective involvement of lawyers. The project demonstrates the role of the EU laws on access to a lawyer in tackling the unjustified and excessive use of pre-trial detention. The project is led by Fair Trials, with partners in five countries: Hungary (Hungarian Helsinki Committee), Italy (Antigone), Bulgaria (Bulgarian Helsinki Committee), Greece (Centre for European Constitutional Law), and Romania (APADOR-CH). Watch the film [here](#).

[What's the role of civil society in ending unjustified pre-trial detention?](#)

The Commonwealth Human Rights Initiative (CHRI) has produced a report, following a roundtable discussion on the 2030 Sustainable Development Agenda and pre-trial detention where we took part in last year. The meeting brought together civil society organisations from across the Commonwealth countries and reflected on their role in addressing pre-trial detention. You can read more about the meeting [here](#).

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ACCESS TO JUSTICE

Debate on popular indictments in Spain

Popular indictments may be the most curious institution in Spanish criminal justice. This institution, in fact, allows any person, to pursue a criminal accusation as long as the crime is public or semi-public. Popular prosecution was introduced as a way to guarantee the effective implementation of the right to access justice and the right to equality among citizens. We have published two guest posts discussing whether popular indictments are a tool to democratise justice or not. You can read the first guest post, based on written material provided by the Catalan National Assembly (Comissió Internacional Assembla Nacional Catalana) and Toni Fitó, Lawyer and Member of the Coordinating Committee of the Legal Profession in Catalonia, [here](#), and the second guest post, written by LEAP member Alejandro Gamez Selma, [here](#).

The role of the National Human Rights Institutions in strengthening procedural rights

Last month, we took part in a workshop on the role of the National Human Rights Institutions (NHRIs) in strengthening the rights of suspects and accused in criminal proceedings. The workshop was hosted by the Ludwig Boltzmann Institute for Human Rights and the Hungarian Helsinki Committee and was part of a wider project implemented by the Ludwig Boltzmann Institute in cooperation with HHC, HFHR in Poland, and the Peace Institute in Slovenia. The event gathered NHRIs working in the EU area and other experts from national and international level. Read more about the event [here](#).

CJEU materials: Mapping CJEU Case Law on EU Criminal Justice Measures & CJEU Preliminary Reference Toolkit

Until relatively recently, the preliminary reference procedure of the Court of Justice of the EU was of little relevance to most criminal justice practitioners. That all changed five years ago, when EU acts in the field of police cooperation and judicial cooperation in criminal matters came under the full jurisdiction of the CJEU. Previously, the CJEU had required prior acceptance of Member States to deliver preliminary rulings on EU criminal law measures. Despite the high-profile example of Celmer, it remains an incredibly useful tool for protecting defence rights.

We have developed a toolkit for assisting in making preliminary references to the CJEU and a supporting document which maps out the CJEU case law on EU criminal justice measures. You can access both of these CJEU materials [here](#).

We're not the only ones within LEAP working in the area, and you should also take the time to check out HFHR's guide on strategic litigation before CJEU [here](#).

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Access to a lawyer

Strengthening procedural rights in Europe: new report goes inside police custody

A new report 'Inside Police Custody 2', involving multiple LEAP members, is the first to examine the implementation in practice of the first three Directives introduced under the Roadmap. This comparative report is based on empirical research carried out by partner organisations in nine EU member states, examining the rights of suspects and accused persons as they are applied and experienced in practice at the investigative stage of the criminal process. The project was co-ordinated by the Irish Council for Civil Liberties (ICCL) on behalf of the JUSTICIA Network. Read more about the report [here](#).

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Right to information

New report by JUSTICE considers accessibility of the justice system

On 25 January, JUSTICE – the UK human rights NGO – launched its latest working party report, 'Understanding Courts'. The working group was chaired by Sir Nicholas Blake and supported by Allen and Overy LLP. The report calls for a legal system that places lay people at its heart and is shaped around their needs. It makes clear that courts and tribunals should not only be places where legal professionals work but also where the public can participate effectively. Read more about the report [here](#).

Stimulating a movement for the use of plain language in criminal justice

On 28 January, Fair Trials and other LEAP members participated in a meeting in Budapest

which gathered plain language experts from different member states along with NGOs and lawyers working in the field of criminal justice. The meeting 'Demystifying justice: training for justice actors on the use of plain language and developing clear and accessible letters of rights' was part of a plain language project coordinated by the Hungarian Helsinki Committee.

The project builds on Fair Trials' previous work with the Hungarian Helsinki Committee on increasing the accessibility of letters of rights. It aims to improve access to justice in European criminal proceedings by stimulating a movement for the use of plain language in criminal justice. It also seeks to encourage the development of more accessible letters of rights to suspects and arrested persons as required by EU law. Read more [here](#).

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Audio-visual recording

[Meeting report from the experience-sharing event on audiovisual recording](#)

Back in November, we held an experience-sharing event on the audio-visual recording of police interrogations of suspects. The event, co-hosted by the Hungarian Helsinki Committee, brought together key criminal justice players in Paris to discuss and exchange experiences with audio-visual recording (AV recording) of police interrogations and its impact on defence rights. The participants included lawyers, civil society representatives, civil servants, officials and personnel from law enforcement bodies from 9 jurisdictions, including Croatia, the Czech Republic, France, Hungary, Ireland, Italy, Norway, the UK, and the US. To read the meeting report, click [here](#).

CROSS-CUTTING ISSUES

Vulnerable suspects and discrimination

[Path of little resistance: is pre-trial detention of children really a last resort?](#)

Transform Justice, a charity working for a fair, humane, open and effective justice system in the UK, has published a new report which analyses current data on the children who are imprisoned on remand, identifies the reasons why they are remanded and puts forward

recommendations for practice and legislative change. Find out more about the report in our guest post written by Fionnuala Ratcliffe which you can find [here](#).

[Enhancing procedural safeguards for suspects with intellectual and psychosocial disabilities](#)

Persons with intellectual and psychosocial disabilities are among the most vulnerable groups of suspects in criminal proceedings. If they come into conflict with the law, they face a particularly high risk of not experiencing a fair trial. In many cases, their vulnerability due to their illness or disability is not identified in due time or not considered. The Boltzmann Institute of Human Rights has addressed this issue, together with the Bulgarian Helsinki Committee in Bulgaria, the League of Human Rights in the Czech Republic, the organisation Mental Health Perspectives in Lithuania and the Peace Institute in Slovenia. Have a look at the 'Dignity at Trial' project [here](#).

Counter-terrorism

[Radicalisation and Extremism in Albania: an outsider's view](#)

As part of our "Security and Human Rights" series, where we highlight violations of and threats to human rights and justice posed by counter-terrorism and anti-extremism measures, we have published a post on radicalisation and extremism in Albania. The post is written by Veronika Kusyova, External Consultant, for the project "Civil Society Countering Violent Extremism" funded by the European Union and implemented by the Albanian Helsinki Committee. Read the post [here](#).

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CASE-LAW UPDATES

[European Court of Human Rights](#)

To read about ECtHR case-law on the right to a fair trial from January to March 2019, please click [here](#).

Have a look also at the European Implementation Network's handbook on Rule 9 interventions [here](#).

[Court of Justice of the European Union](#)

To read about CJEU case-law on the right to a fair trial from January to March 2019, please click [here](#).

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How are we doing?

Let us know what you think of these updates. Too long? Not detailed enough? Is there stuff that we're missing or that you'd like to see more of?

Do you have a contribution to make? We are always looking for guest posts on our website, as well as news for our Quarterly, so please get in touch for either.

Do you know somebody who could be interested in receiving this bulletin? Then tell them to send an email to marianna.tuokkola@fairtrials.net, or alex.mik@fairtrials.net, and we will be happy to sign them up to our mailing list.

If you do not wish to receive the bulletin any longer, please unsubscribe by sending an email to the same address marianna.tuokkola@fairtrials.net.

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