

LEAP Quarterly Report May 2012

Welcome to the second LEAP quarterly report, FTI's communication to keep everyone up to date with progress in our *Justice in Europe* campaign and to engage the LEAP network in EU justice issues.

A big thank you to everyone for the overwhelmingly positive feedback received following the first quarterly report in February – please continue to **let us know** what you think. We hope that this will continue to prove a useful tool for you all.

Request for cases

Thank you to those of you who have been in contact about recent cases or developments in EU law within your area of expertise. We remain very keen to hear about ongoing cases in your jurisdictions. These cases will help us to understand key issues in criminal practice in the EU, and to address them through policy work and legal interventions. We are, in particular, interested in hearing about cases in the following areas:

- **The European Arrest Warrant (EAW):** Cases in which execution of an EAW has been refused, but the EAW is not withdrawn, leaving the individual facing a risk of arrest in other Member States, and cases in which the EAW is issued for a very minor offence and where extradition will have a disproportionate impact on the individual.
- **Interpol:** FTI would like to speak to anyone who is or has been subject to an Interpol red notice.
- **Access to a lawyer:** Cases where access to a lawyer has been denied or restricted, particularly during police questioning and in pre-trial detention.
- **Vulnerable suspects:** Cases in which the suspect or accused is particularly vulnerable, for example due to mental health or age.

Likewise if there are significant appeals in the higher courts in your Member State concerning the European Arrest Warrant, access to lawyers or pre-trial detention, we would **like to know** about them.

FTI news

LEAP/Interpol: FTI held its first LEAP sub-group meeting in Strasbourg on 11 April. Six LEAP members, other invited guests and several FTI staff members gathered to discuss Interpol and the issuing of red notices with guest speaker, Interpol's Senior Legal Counsel, Yaron Gottlieb. Several members discussed their experiences of working with clients subject to Interpol red notices and Yaron Gottlieb provided a valuable insight into the inner workings of Interpol. We hope that this is the start of a fruitful dialogue between FTI and Interpol.

Benny Wenda Interpol application: FTI has recently submitted an application to the Commission for the Control of Interpol's Files on behalf of Mr Benny Wenda, the refugee political activist from West Papua whom Indonesia had targeted with a public red notice after he fled the country. In the application, we argued that the red notice issued was unlawful, since (i) it was based on politically-motivated charges and was being used as a political device to limit his campaigning activities (ii) it was contrary to the spirit of the Universal Declaration of Human Rights as it restricted his freedom of speech without justification, and (iii) it did not serve the proper purpose of a red notice, as Mr



Wenda is not a fugitive and his extradition would be prohibited by international law. Read the application [here](#).

European Young Defenders Programme: FTI's European Young Defenders Programme 2012 was held at the European Youth Centre, Strasbourg from 10 to 13 April 2012. Fifty young criminal defenders from twenty jurisdictions participated in this free 4-day programme which provided high quality training, information and mentoring opportunities in the fields of human rights law, criminal law and advocacy. A big thank you to all of the LEAP members who came to Strasbourg and helped make this event such a resounding success.

Advancing Defence Rights survey: We would like to thank all of you who have completed and returned the Advancing Defence Rights questionnaire to our project partners, EuroMoS. Your knowledge about the barriers to a fair trial in practice in your country is invaluable to this [project](#). If you have not yet returned your questionnaire then we encourage you to do so as soon as possible so that EuroMoS can begin analysing the data and we can start work on the interactive map showing the state of defence rights protection in the EU. Completed questionnaires and any queries about the process should be sent to [EuroMoS](#).

Conferences/Publications:

- **Pre-trial detention:** FTI has published a pre-trial detention update report summarising the responses of both civil society and Member States to the European Commission's Green Paper on detention, urging action to ensure minimum standards for the use of pre-trial detention throughout the EU. Our thanks to those LEAP Members who assisted us in analysing their Member States' responses to the Green Paper. Our update report can be viewed [here](#).
- **European Arrest Warrant:** Our briefing paper asking for support for an own initiative legislative report seeking reform of the EAW at the EU level was sent to MEPs on the LIBE Committee in February and can be read [here](#). We have also recently sent a [briefing paper](#) setting out a six-point plan for extradition reform to all UK MPs urging the Government to take urgent action.
- Former Fair Trials International Policy Intern, Gabriele Ruberto, [wrote](#) an article for Italian law journal Top Legal arguing the need to reform the European Arrest Warrant. We have also written two recent [articles](#) for Public Service Europe about the need for reform of the European Arrest Warrant system.

Membership news

New Members: We are delighted to welcome a new member to LEAP from Greece, Orestis Georgiadis. Orestis is a criminal defence lawyer with extensive experience in EU law and cross-border cases and has recently worked with FTI on an extradition case involving the UK, Greece and Albania. The current list of members can be viewed [here](#).

LEAP Sub-groups: FTI is continuing to build up a number of LEAP specialist sub-groups which will allow LEAP members and FTI's policy and casework teams to share ideas and exchange information of mutual interest outside of formal meetings. The meeting of the Interpol sub-group in Strasbourg was the first of what we hope will be many fruitful discussions in these small working groups. More detail about the sub-groups can be found in the [last quarterly report](#).



In-country groups: FTI is planning to hold a series of in-country discussion and training groups comprised of local practitioners. These will focus on pre-trial detention and work towards the successful implementation of the new Roadmap directives in different EU jurisdictions. If you would be willing to assist with one of these groups then please [let us know](#).

Publications: LEAP member Jackie Hodgson published [an article](#) 'Safeguarding Suspects' Rights in Europe: A Comparative Perspective' in the October 2011 issue of the New Criminal Law Review. If you have recently published an article on interesting fair trials or cross-border justice issues, please [send them in](#) and we will circulate them in the next quarterly report.

European Criminal Justice Observatory: The European Criminal Justice Observatory provides online training and networking on European criminal law for legal practitioners and others interested. The European Criminal Justice Observatory is offering special rates to LEAP members who join before 16 May 2012. For further information [contact us](#) and to become a member see the ECJO [website](#).

[Dates for your diary](#)

October event on EU defence rights, European parliament: More details about our two-day conference in Brussels in October will be circulated soon and we hope that as many LEAP members as possible will be able to attend. The event will see the launch of the FTI/EuroMoS Advancing Defence Rights report. We will also assess progress on the EU Defence Rights Roadmap so far.

[Recent developments in EU criminal justice](#)

The right to an interpreter and translator in criminal proceedings – concerning developments in the UK: LEAP Members Liese Katschinka, President of EULITA and Dr Ellen Moerman, a legal translation and interpreting specialist, write about the potential damage to fair trial rights which could be caused by recent changes in the interpreting and translating services provided in courts in the UK. With the first Roadmap measure, the Directive on the right to interpretation and translation in criminal proceedings, due to be implemented by the end of 2013, all LEAP members will need to be alert to similar problems in their own countries.

Liese Katschinka: In an effort to reduce the cost of language services for courts and judicial authorities, the UK Ministry of Justice signed a contract for the provision of language services with ALS, a private translation and interpreting agency. The associations of professional court interpreters in the UK made consistent efforts to present their plans for a cost-effective language regime to the Ministry of Justice throughout the tendering process, but there never were any genuine consultations with the involved stakeholders. The full article is available on our [website](#).

Ellen Moerman: Since the changes to interpreting have taken effect in the UK, there has been "chaos in the courts" with a greater proportion of cases than ever before having to be postponed or even abandoned as about half of the qualified interpreters are refusing the new working conditions. The criminal justice system now needs to decide what to do when a suspect or a defendant is left without an interpreter and some interesting strategies are emerging. The full article is available on our [website](#).

The right to information in criminal proceedings – Directive formally adopted: On 26 April 2012, the European Council formally adopted the Directive guaranteeing that anyone arrested in an EU



country gets key information about basic legal rights and the charges against them. For more information click [here](#).

The right of access to a lawyer – discussions about draft Directive continue: Discussions about the draft directive guaranteeing the right of access to a lawyer have been ongoing in both the Council and the European Parliament. The Council has now issued a revised draft of the directive which disappointingly weakens the Commission proposal in many respects. FTI has long campaigned on the importance of access to legal advice, which is an essential component of a fair trial, and will work with other members of civil society to try and ensure that the basic requirements set out in the *Salduz* case are included in the directive.

Procedural rights of vulnerable suspects: FTI attended a civil society meeting at the European Commission in Brussels on 26 April 2012 on Measure E of the Roadmap, a directive to introduce special safeguards for suspected or accused persons who are vulnerable. The Commission is currently nearing the end of its impact assessment in relation to the need for legislation to protect the rights of vulnerable people, including children, and it is hoped that a draft proposal will be published early in 2013. If there are particular groups of people in your jurisdiction that you think should benefit from this measure, please [let us know](#).

European Criminal Records Information System (ECRIS) implemented: [ECRIS](#), which had to be implemented in all Member States by 27 April 2012, requires EU countries to share information about criminal records data so that if a person is convicted of a criminal offence in any EU country this will appear on their criminal record in their home state. Read more about ECRIS [here](#).

[Recent cases in which LEAP Members and FTI have been involved](#)

George Wright: On 17 November 2011, the Lisbon court of Appeal refused to extradite George Wright, a US citizen who had escaped from an American prison in the 1970's where he was serving a sentence of 30 years imprisonment for robbery and murder. The Court denied his extradition on three main grounds: (i) he is now a Portuguese citizen; (ii) the time elapsed since the events is not compatible with the statutory limitation period in the Portuguese Criminal Code or with the principle of fair proceedings and the requirement for legal certainty under Portuguese law; and (iii) the court found that extraditing a person to serve a sentence after more than 40 years when that person has proved to be totally integrated in the community of the requested State and has no connection to the country requesting extradition is incompatible with the constitutional principles of Portugal, which state that criminal sanctions must be for the purpose of deterrence and social integration and not for retribution. The court also considered the fact that the crime was committed when the defendant was eighteen years old and the severe consequences that extradition would have for such an elderly person.

The United States appealed the decision, but the Portuguese Supreme Court rejected the appeal on procedural grounds, ruling that it was inadmissible. Further information about the case is available [here](#). If you would like further information on the grounds of the decision, please [contact](#) LEAP Member Vânia Costa Ramos.

Graham Mitchell: Graham, a 50 year-old British citizen, went on a fishing holiday in Albufeira, Portugal in May 1994. Graham and another person were arrested after a German tourist fell or was



pushed from a 12-foot sea wall, tragically leaving him paralysed. After 10 months in pre-trial detention in Portugal in very poor conditions, Graham was charged with attempted murder. Mr Mitchell was acquitted and released in May 1995. Graham came home and began rebuilding his life. In March 2012, he was arrested without warning pursuant to an EAW seeking his extradition to Portugal to face charges based on the same facts for which he was tried and acquitted in 1995. It appears that an appeal against the acquittal was brought by the victim and/or the prosecution which succeeded in Portugal on a point of law and a re-trial was ordered in Graham's absence. Graham's case has come before the UK courts on two occasions, on which he has been represented by LEAP members Ed Grange (solicitor) and Ben Cooper (barrister). The court has adjourned the case until July, and Graham is on bail in the meantime. For more information about Graham's case click [here](#).

Natalia Gorczowska: Natalia, a 23 year-old Polish national, was given a suspended sentence in Poland when she was 17 for possession of a small quantity of amphetamines for personal use. Soon after the sentence was passed, Natalia travelled to the UK, built a stable life, obtaining employment and kicking her drugs habit. In 2011 she gave birth to a son, of whom she is the sole carer. In December 2011, Natalia was arrested under an EAW seeking her return to Poland to serve her sentence, on the basis that she had breached the terms of her probation by leaving for the UK. In February 2012, Natalia lost her appeal against extradition in the High Court, which found that the importance of ensuring extradition agreements are respected justified this serious interference with Natalia's and her child's family life. Natalia narrowly avoided being extradited on her son's first birthday after her lawyers, LEAP members Mike Evans and Harry Coleman, obtained a rule 39 indication from the ECtHR preventing her extradition. In April 2012, FTI received official confirmation from the UK authorities that Polish prosecutors had agreed to withdraw the EAW after the sentence was re-suspended, meaning that Natalia is finally safe from extradition. She can now focus, once again, on her normal life and raising her one-year-old son. For more information about Natalia's case click [here](#).

Recent cases filed or decided at the European courts

Babar Ahmad and Others v. the United Kingdom (ECtHR): The six applicants challenged extradition from the UK to the US, where they are wanted for trial in relation to various terrorism offences, on the basis that this would violate their rights under Article 3 of the ECHR. If extradited and convicted in the USA, the men will be held at ADX Florence, the "super-max" prison which holds convicts considered to pose the greatest possible threat to American national security. Their argument had two main strands: firstly that the conditions in ADX Florence constituted torture or at least ill-treatment; and secondly that the probability of an extremely long sentence being imposed upon them, potentially with no possibility of parole, also amounted to a violation of article 3. The Court rejected the applicants' arguments, holding that article 3 ECHR should not prevent extradition in every case where there is a risk of ill-treatment of any kind in the requesting state. The Court paid tribute to the procedural safeguards in place in the American legal system, considering them sufficient to ensure respect for human rights. It is significant that the Court adopted this stance in the wake of the [Othman \(Abu Qatada\) v. the United Kingdom](#) judgment, at a time of heightened public concern for the risk of torture/ill-treatment in extradition cases. The judgment is available [here](#) and more detailed commentary on the case may be found [here](#).



OSJI case watch blog: Members may be interested to read a blog run by the Open Society Justice initiative. In the **“Case Watch” reports**, lawyers from OSJI provide analysis of notable court decisions and cases that relate to their work to advance human rights law around the world. Recent posts cover such issues as the need to **protect children in pre-trial detention** in Turkey and a **decision of the ECtHR** reaffirming that the right of accused persons to present and challenge evidence must be respected at all stages of proceedings.

