

LEAP Quarterly Report August 2012

Welcome to the third 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 about these reports – please continue to [let us know](#) what you think. We hope that this will continue to prove a useful and informative bulletin for you all.

Date for your diary

10-11 October Annual LEAP meeting and FTI conference at the European parliament: You should all have received details of the major two day conference that we will be holding in the European Parliament, Brussels on 10 and 11 October (please see attached). We hope that as many of you as possible will attend this event which includes the annual LEAP conference. Don't forget to book your room and travel as soon as possible as it will be a very busy week in Brussels. Please contact [Emily](#) with any questions or to confirm that you have booked to come along.

Request for cases

Thank you to those of you who have been in contact about recent cases or developments in EU law. We remain keen to hear about ongoing cases in your jurisdictions. These cases 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- **The European Arrest Warrant (EAW):** Cases in which execution of an EAW has been refused, but the EAW is not withdrawn, leaving the individual facing a risk of arrest in other Member States, and cases in which the EAW is issued for a very minor offence and where extradition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 with a client who 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.
- **Legal aid:** Cases where problems with access to publicly funded legal assistance have meant that suspects cannot effectively exercise their rights.

FTI news

Advancing Defence Rights survey: Thanks to all of you who completed and returned the Advancing Defence Rights questionnaire to our project partners EuroMoS earlier this year. Your expertise is proving extremely valuable as we compile our report on the state of defence rights and the practical barriers to a fair trial in each member state. Alongside the report, FTI is producing an inter-active web-based map of all EU countries, which will show each country's record in terms of violating fair trial rights or failing to protect against arbitrary and excessive pre-trial detention. Many thanks to international law firm **Clifford Chance** and to those LEAP members who assisted us in researching



the country information. The report, as well as our interactive map, will be launched at the Brussels conference.

Direct assistance: We have produced new notes of advice on criminal proceedings and defence rights in [Poland](#) and [Ukraine](#). Our thanks to LEAP member **Maciej Kusmierczyk** and to law firm **Egorov Puginsky Afanasiev & Partners** in Kyiv, Ukraine for giving generously of their time to help produce these.

Conferences/Publications:

- **Legal aid:** We have prepared a report on how legal aid works in practice in each member state from the results of the Advancing Defence Rights questionnaires that are relevant to legal aid. The report can be viewed [here](#).
- **Interpol:** Catherine Heard and Alex Tinsley published an [article](#) ‘The Power of the Interpol Red Notice’ in the International Enforcement Law Reporter. The article argues that more must be done to protect Interpol’s systems against abuse and to provide a fairer system for challenging red notices in cases of possible injustice.
- We have also written about European Arrest Warrant reform in a [post](#) for the UK Human Rights blog and an [article](#) for Public Service Europe. Policy Officer Emily Smith and FTI client Garry Mann appeared on a [programme](#) dedicated to defence rights in the EU on Euronews.

Membership news

New Members: We are delighted to welcome a new member to LEAP from Sweden, **Sanna Herlin**. Sanna is a criminal defence lawyer with extensive experience in extradition and defence rights.

Pre-trial detention call for action: In June, FTI and more than twenty LEAP members [wrote](#) to members of the European Parliament calling for urgent EU action to tackle pre-trial detention in the EU. The letter was sent six months to the day since the European Parliament overwhelmingly supported a resolution demanding EU action to prevent excessive and unjustified pre-trial detention. FTI has also written a [joint letter](#) with 12 other organisations to the Vice-President of the European Commission, Viviane Reding, calling on the Commission to publish its plans on pre-trial detention as a matter of urgency. We have long been calling for action at EU level to end the misuse of pre-trial detention in Europe and will of course keep you informed of any updates that we receive.

Local Expert Groups: The first Local Experts Group meeting will take place in Madrid at the offices of Clifford Chance in October. Invitees include former Supreme Court justice Enrique Bacigalupo, award-winning defence lawyer Francisco Andujar, several senior criminal law academics at the Complutense and Autónoma universities of Madrid, and representatives of the Asociación Pro Derechos Humanos, Spain’s leading human rights NGO. The meeting will result in a joint statement on behalf of Spanish civil society urging the Commission to take action to tackle excessive pre-trial detention in the EU. We also hope to establish links with key players in Spain to give FTI greater ‘in-country’ presence going forward. Plans are also underway to develop the Polish and French Legal Experts Groups.

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. In the coming months we will be looking to put together sub-groups to discuss legal aid and vulnerable suspects, the next two measures in the Roadmap of procedural rights. If you have particular expertise in either of these areas please [let us know](#).

EU citizenship consultation: The European Commission is calling on citizens all over the European Union to help set the policy agenda for the next five years and shape the future of Europe in the biggest ever EU public consultation on citizens' rights. The consultation asks the public about the obstacles they face in exercising their rights as EU citizens and it comes ahead of the 2013 European Year of Citizens. FTI will be preparing a briefing for the consultation and we encourage as many of you as possible to fill in the online questionnaire. More information can be found [here](#).

Publications: LEAP member **Dr. Cliff Gatzweiler** has published an article (attached) 'The new EU directives – strengthening the procedural rights of suspects and accused persons in criminal matters' in Zeitschrift Strafverteidiger Forum (StraFo). 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.

[Recent developments in EU criminal justice](#)

European Supervision Order – implementation date approaches: A reminder that the implementation date for the European Supervision Order (ESO) is fast approaching. The ESO, which lays down rules according to which one Member State must recognise a decision on supervision measures issued by another Member State as an alternative to pre-trial detention, must be implemented by all Member States by **1 December 2012**. The problems non-nationals face when applying for release pending trial may be eased by the introduction of the ESO, as long as it is implemented in such a way that it represents a real and practical alternative to pre-trial detention. We will be doing work in the coming months to raise awareness of this new EU law and will be in touch about this. In the meantime, please [let us know](#) what your country is doing to implement the ESO.

The right of access to a lawyer – trilogues begin: There have been a number of recent developments on the draft directive guaranteeing the right to access a lawyer and to communicate on arrest. In April, the Council issued a revised draft of the directive which disappointingly weakened the Commission's original proposal in many respects. In response to this, FTI and eight other organisations issued a joint statement setting out the group's concerns with the revised draft. You can read a summary of the statement [here](#) and the full response [here](#). In July, the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (LIBE) approved certain amendments to the Commission's proposal to pave the way for negotiations with the Council towards finalising the Directive. FTI was delighted that the Parliament retained most of the key protections from the original proposal, including dual representation in EAW cases, strong confidentiality provisions, and the right to access a lawyer 'in person' and to communicate with both a nominated person and consular authorities on arrest. You can read more [here](#). Trilogues will begin in September and we look forward to discussing the progress with MEPs and Commission representatives at our event in Brussels in October.



Extradition: Ireland has recently passed an amendment to its implementing legislation which extends the geographical scope of the provisions of the European Arrest Warrant system to certain countries outside of the EU. While the Irish Government has stated that the extension will initially only apply to Iceland and Norway, the new law allows ministers to apply it in the future to other countries where there is an agreement in force for the surrender of persons between the third country concerned and the EU. FTI sees numerous clients extradited for minor offences who may then spend months or years in detention awaiting trial. We are concerned about any extension of the European Arrest Warrant to non-EU countries before the flaws in the system are fixed. Please [let us know](#) if you hear of any similar plans in your country.

Recent cases in which LEAP Members and FTI have been involved

Edmond Arapi awarded compensation: Edmond Arapi was arrested in June 2009 after an Italian prosecutor, in a clear mistake, issued a European Arrest Warrant (EAW) based on the conviction of another man for a crime committed in Italy while Edmond was at work in the UK. Edmond and his family went through a year-long ordeal as he was first detained for two weeks and then subjected to very strict bail conditions, ended only in June 2010 when the prosecutor recognised the mistake and withdrew the EAW. The Italian court has now awarded Edmond approximately GBP 20,000 in compensation. While the amount does not adequately compensate the Arapi family, it nevertheless acts as a warning for judges and prosecutors across Europe, who have been using the tick-box EAW without thinking and in completely inappropriate cases. Edmond was ably represented in the original proceedings and the compensation claim by LEAP member **Federico Romoli**.

Graham Mitchell: We wrote about the case of Graham Mitchell, who was wanted under an EAW by Portugal for a crime he had been acquitted of nearly twenty years ago, in the last LEAP quarterly review. We are delighted to report that Graham received confirmation in May that the Portuguese authorities had withdrawn the European Arrest Warrant against him. Graham was assisted throughout his ordeal by LEAP members **Ed Grange** and **Ben Cooper** in the UK and **Vania Costa Ramos** in Portugal. For more information about Graham's case click [here](#).

The **UK Supreme Court** has handed down two important judgments concerning extradition proceedings:

In **F-K**, the Supreme Court considered the appeal of a mother of five against her extradition to Poland for a relatively minor offence committed over 10 years ago. An expert instructed to assess the potential impact of extradition on the children found that it would have 'severe detrimental consequences' and spoke of 'extreme psychological damage'. Lady Hale gave an important judgment stressing the low gravity of the alleged offending, the amount of time that had passed, and the fact that F-K had led a 'blameless life' in between. She found that the exceptionally severe impact on the younger children in the family meant that extradition would be a disproportionate interference with F-K's (and her children's) right to family life. The [judgment](#) stresses that, in order properly to take into account children's interests, extraditing courts must seek expert opinions and carefully consider the impact of extradition. F-K was represented by LEAP member **Ben Cooper**.

Halligen required the court to consider time limits in appeals against extradition. Halligen's appeal notice was faxed to the relevant authorities one day late, and so was dismissed on technical grounds. However, the Supreme Court found that Article 6 of the ECHR applied to the proceedings:



as a Citizen of the UK, Halligen had a long-standing civil right to enter and remain in the UK as and when he pleased, and this right was ‘determined’ by the extradition proceedings. Strict adherence to the appeals rule denied Halligen access to any appeal process, and so it was held that courts have discretion in exceptional circumstances to extend time for service of appeals. This is an important development in ensuring that everyone facing extradition has a fair hearing. LEAP member **Mike Evans** acted in the case. You can read the judgment [here](#).

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.

[Recent cases filed or decided at the European courts](#)

Opinion of Advocate General Mengozzi in the case of Joao Pedro Lopes Da Silva Jorge (ECJ): In 2006, Portugal issued an EAW against the defendant, a Portuguese national living in France, requiring him to serve an outstanding sentence. The defendant did not consent to surrender and wanted to serve his sentence in France. The question for the court related to Article 4(6) of the EAW Framework Decision which allows a court to refuse to execute an EAW where the requested person is staying in, or is a national of, the executing state and that state undertakes to execute the sentence in accordance with national law. Under French law, this discretionary refusal ground is only available to French nationals. The defence argued that the lack of discretion in relation to non-nationals was incompatible with the Framework Decision and the principle of non-discrimination enshrined in Article 18 of the Treaty of Fundamental Rights in the EU. The Advocate General agreed, stating that while Article 4(6) does not grant any individual the automatic right to serve their sentence in the executing state, discretion must be exercised in the light of the circumstances of each individual case and the ground for refusal must be available to both nationals and non-nationals. The full opinion is available [here](#).

