

## LEAP Quarterly Report February 2013

Welcome to the to the first LEAP quarterly report of 2013. 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.

### FTI and LEAP news

**Local Experts Groups:** On 4 December 2012, we held our second Local Experts' Group meeting at the offices of Clifford Chance in Warsaw – the first meeting was held in Spain in October. The meeting drew together leading criminal law practitioners and academics to discuss pre-trial detention in Poland. Many thanks to LEAP member Mikolaj Pietrzak for all his help in organising this. We are looking forward to the next Local Experts' Group meeting in Budapest on 21 February. Communiqués have now been published summarising the conclusions from the meetings in [Madrid](#) and [Warsaw](#).

**Vulnerable Suspects:** FTI held its first LEAP sub-group meeting at the offices of Clifford Chance in London on 28 November, when eleven experts met to discuss the need for special safeguards for vulnerable suspects involved in criminal proceedings, the next measure in the Roadmap of procedural rights. These sub-groups allow LEAP members and FTI's policy and casework teams to share ideas and exchange information on topical issues of mutual interest outside of formal meetings. At the meeting we identified the key areas which the legislation should cover and we have now published a [communiqué](#) which we will use to encourage the EU institutions to put in place effective legal guarantees of the special protections that vulnerable suspects need.

**Translations of FTI reports:** Our fact sheets on the [Directive on the right to interpretation and translation](#) and on the [Directive on the right to information](#) and our report on the [draft Directive to access a lawyer](#) are now available in French, German, Spanish and Italian. We have also had our case studies translated into a number of European languages, which are available [on our website](#). Please do send these to people in your country who might be interested in FTI's work. We would like to thank those volunteer and pro-bono translators who have made these important resources possible, including LEAP member Federico Romoli, law firms Herbert Smith, Hogan Lovells and Clifford Chance, and Barrett Translations. If you would like to translate any of our materials to make them more accessible in your country then please [let us know](#).

**Updating FTI's map of EU countries' fair trials standards:** In October 2012 we launched a new [interactive map](#) which provides an overview of the state of fair trial rights in every Member State, including judgments of the European Court of Human Rights; criticisms by international organisations, local press and NGOs; and details of FTI's own cases. We are in the process of updating the map and would like your help with this. Please take a look at the information on the map for your country, and if there is anything that you think should be added then [let us know](#). We would also be delighted to include links to any reports that you have produced or important cases that you have been involved in.

**Academy of European Law training seminars:** The Academy of European Law is running two series of training seminars for European legal professionals during 2013 and 2014, one on the Charter of Fundamental Rights of the EU and one on improving conditions related to detention. FTI is a partner



organisation for these projects and we will be delivering modules at several of the seminars. If you are interested in attending, more information on the Charter of Fundamental Rights seminars is available [here](#) and on the detention seminars [here](#).

## Recent developments in EU criminal justice

**European Supervision Order – implementation date passes:** The implementation date for the European Supervision Order (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, passed on 1 December 2012. We have published a [guide to the ESO](#) which sets out some of the situations in which an ESO may be appropriate and hope that it will help you apply for ESOs in your cases. A number of Member States have so far failed to implement the ESO. This includes the UK, and FTI has [written about the missed opportunity](#) that this represents. Please [let us know](#) what steps your country is taking to transpose the ESO into national law and tell us about any cases in which you have tried to use it.

**New UN Guidelines on legal aid to inform EU legislative measure:** In January, the United Nations General Assembly adopted the world's first international instrument dedicated to the provision of legal aid. The [Principles and Guidelines](#) recognise that legal aid is an essential element of a functioning criminal justice system, and is a foundation of both the rule of law and the right to a fair trial. The Principles recognise a number of components of effective legal aid, including the right to be informed of legal aid before police questioning begins. Last year, FTI published a [report](#) demonstrating the problems with legal aid systems in EU Member States. We hope that these new guidelines will encourage the EU to produce a strong proposal on minimum standards for legal aid, one of the next measures under the Roadmap. A summary of the Principles and Guidelines by LEAP member Zaza Namoradze of OSJI is available [here](#).

**Extradition:** The UK Government [announced](#) long awaited reforms to the UK's extradition laws in February. Unfortunately, these only introduce one additional safeguard, a forum bar, and do not implement many of the reforms to the European Arrest Warrant that we have long called for. Read an article about the need for further reform [here](#).

**UK opt-out of EU police and criminal justice laws:** The UK must decide by 2014 whether to continue taking part in EU police and criminal justice laws passed before the Lisbon Treaty came into force, including the European Arrest Warrant. We have published [a submission](#) to a parliamentary inquiry on this subject and provided oral evidence to the Committee. The submission makes a number of key recommendations, in particular that the UK should not agree to sign up to the measure unless there is a political commitment to reform it in Europe. We have urged the UK government to encourage other Member States to agree to sensible reforms of the Arrest Warrant in order to create a fair and effective system of extradition within Europe. If you think your government would support these amendments please [let us know](#).

## 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.
- **Presumption of innocence:** Cases where a suspect's right to a presumption of innocence has not been respected, for example because a decision to remain silent has been used against them.

### Recent cases in which LEAP Members and FTI have been involved

**Fair Trials intervention:** In November we intervened in a Czech case involving an EAW issued for a minor offence. In the submission, Fair Trials outlined the recognition across Europe of the problem with EAWs being used for minor crimes and encouraged the Czech court to ask the EU's Court of Justice in Luxembourg for a ruling on whether it is lawful to use Arrest Warrants in this way. A ruling from the EU Court would be an important step in the right direction and we will continue to encourage domestic courts in Europe to refer these cases to the Luxembourg court. You can read the intervention in full [here](#).

**The Minister for Justice v. Machaczka (2012) IEHC 434 (Irish High Court):** Poland issued three EAWs against Mr Machaczka in relation to fraud offences. The defendant has longstanding mental health problems and argued that his extradition to Poland would breach his Article 8 rights under the ECHR as there was a high risk that he would attempt to commit suicide if separated from his family. The court accepted that extradition would constitute a disproportionate interference with the respondent's right to respect for family life given the exceptional circumstances of the case and refused to execute the warrant on this basis. The Court reiterated that the threshold for refusing extradition of Article 8 grounds remains very high but found that it was met in this case because the defendant's previous suicide attempts had taken place after he was separated from his son following the break-up of his first marriage. The full judgment is available [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 please [let us know](#).

### Recent cases filed or decided at the European courts

**Case C-393/11 Radu (CJEU):** We wrote in the [last Leap Quarterly Report](#) about the [Opinion of Advocate-General Sharpston](#) in Radu. The Court has now issued its judgment, deciding that despite the Romanian court's general questions, the underlying issue in the case was Germany's failure to



subpoena Radu before seeking his extradition. It ruled that Articles 47 and 48 of the Charter did not allow refusal to execute an EAW on the basis that the person was not heard by the issuing authority, since (according to the CJEU) the effectiveness of the EAW depended on surprise, and the person had a chance to be heard in the executing state. The CJEU did not address whether, as a matter of principle, a court executing an EAW must do so having regard to the person's Charter rights. The general nature of the Romanian court's questions had provided the CJEU with an opportunity to provide some clarity on this area of extradition proceedings. The judgment was particularly disappointing in light of the Advocate General's opinion, which stated that the limited grounds for refusing extradition in the EAW Framework Decision were not exhaustive: judicial authorities were 'bound to have regard to the fundamental rights set out in the Convention and Charter'. The full judgment is available [here](#) and a piece written by FTI strategic casework Alex Tinsley can be read [here](#).

**Zdravko Stanev v. Bulgaria Application no. 32238/04 06 November 2012 (ECtHR):** The applicant argued that as an unemployed person with no income, he could not afford to appoint his own defence counsel and that the national court's decision not to appoint a lawyer for him violated Article 6(3)(c) ECHR. The court upheld his complaint, stating that "the interests of justice demanded that, in order to receive a fair hearing, the applicant ought to have benefited from free legal representation during the proceedings". The Court reached this decision having been satisfied that the cases fulfilled the two requirements for free legal assistance; the applicant did not have the means to pay for legal assistance and, due to the complexity of the legal proceedings, it was in the interest of justice that legal assistance was provided. The full judgment is available [here](#).

**El-Masri v. The Former Yugoslav Republic of Macedonia Application no. 39630/09 (ECtHR):** The ECtHR held in December that a country is responsible for guaranteeing a person's Article 3 and 5 rights not only on its own territory and in the country where the person is being transferred to, but also during the transfer itself. The case concerned the extraordinary rendition of a German citizen to a CIA base in Afghanistan by the FYROM. As well as being found in breach of Article 5 for the time that the applicant spent in captivity in Afghanistan, the Court also ruled that FYROM breached Article 3 when it transferred El-Masri to the CIA, despite the existence of a real risk that he would be subjected to inhuman and degrading treatment during transfer. The Court also ruled that FYROM was responsible for breaches of Articles 3 and 5 during the time in which El-Masri was detained in FYROM. The full judgment is available [here](#).

## LEAP Business

**Membership renewal:** Thank you very much to those of you who filled in the LEAP membership renewal form circulated in January. We have an exciting year ahead for LEAP, as we work towards implementation of the first two Roadmap measures and negotiations continue on the draft directive on the right to access a lawyer. If you are interested in remaining a part of LEAP and have not yet filled this in then please [send it to us](#) as soon as possible. You can download it [here](#). Several of you have let us know about changes to your biography, which are reflected in the [updated membership list](#). If anyone else would like to update their details then please [let us know](#).



**LEAP Annual Conference 2013:** This year's LEAP Annual Conference will be held in London in mid-June. We will be in touch soon with further information and hope that as many of you as possible will be able to attend.

