

## LEAP QUARTERLY REPORT AUTUMN 2014

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### LEAP ANNUAL CONFERENCE – REGISTER NOW!!

The LEAP Annual Conference will take place on 6-7 February 2015 in Amsterdam, the Netherlands. The conference will run from 13:00 on Friday 6 February until 22:00 on Saturday 7 February after dinner. For the first 75 people to register, we will (a) provide accommodation at the conference venue for the nights of 6 and 7 February and (b) reimburse travel expenses up to 200 euros; and (c) provide dinner on the evening of Saturday 7 February. The programme will include speakers from the EU institutions and group sessions on three themes: implementation of the existing Roadmap Directives, the measures currently under discussion in Brussels, and areas for future EU action. This year, Fair Trials will ask LEAP members for a registration fee of 100€. To register, or for any questions, email Alex Tinsley at [alex.tinsley@fairtrials.net](mailto:alex.tinsley@fairtrials.net) by 5 January 2015. A full agenda will be sent out in January.

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## JUSTICE IN EUROPE

### IN BRUSSELS

#### EU-level developments

**New European Commission** – The new European Commission, with Mr Jean-Claude Juncker of Luxembourg as President, took office on 1 November. Ms Věra Jourová, of the Czech Republic, has been appointed as the Commissioner on Justice, Consumers and Gender Equality. Ms Jourová – who spent some time in pre-trial detention in criminal proceedings earlier in her career – takes over from Ms Viviane Reding. In her opening statement, which you can read [here](#), Ms Jourová referred to her experience and spoke of the importance of the justice aspect of her portfolio. Mr Frans Timmermans, of the Netherlands, has been appointed as Vice-President for the Rule of Law and the Charter of Fundamental Rights of the European Commission; he gave this [speech](#) in November highlighting the transition of former ‘third pillar’ measures to full EU law status (see 1 December 2014, below).

### THE ROADMAP

#### Implementation activities

**LEAP roundtable on implementation, 8 October 2014** – LEAP members met in Brussels to discuss LEAP’s role in the implementation of the Roadmap Directives, focusing on lobbying national ministries and legislatures about transposition of the Directives and compliance with CJEU judgments, organising litigation in the national courts to encourage reliance on the Directives and challenge unsatisfactory implementation, raising awareness of the Directives through publications and conferences, and taking complaints to the European Commission to encourage infringement actions in relation to unsatisfactory implementation. An action plan will be published early in 2015 with full details of the plans developed.

**Fair Trials launches new defence rights e-training course** – On 24 November 2014, with the assistance of the Legal Education Foundation and Freshfields Bruckhaus Deringer, Fair Trials published an [innovative online training course](#) on the Interpretation and Translation Directive, the Right to Information Directive and role of the CJEU in criminal matters. The courses, delivered by Fair Trials staff, include video tutorials, relevant background materials and written exercises to enable users to test their knowledge. LEAP members are encouraged to take these courses and share them among colleagues. In 2015 Fair Trials will work with the LEAP Advisory Board to produce video forewords to the courses, placing them within the national legal context to help lawyers from all Member States to use them in practice.

**Practitioner Training on the Roadmap Directives in Warsaw** – On 21-23 November 2014, Fair Trials, together with the Helsinki Foundation for Human Rights (‘HFHR’), delivered a practitioner training weekend on the Roadmap Directives in Warsaw. The training brought together 40 lawyers from Germany, Austria, the Czech Republic, the Slovak Republic and Poland. LEAP members Cliff Gatzweiler (Rechtsanwalt Cliff Gatzweiler) and Ondrej Laciak (Ondrej Laciak Law Office) assisted together with Miroslav Krutina (Krutina & Partners). The training was the first of six trainings under the [programme](#) launched in May 2014, which will be delivering training to 240 lawyers from all 28 EU member states during 2014 and 2015. The training included practical exercises and a ‘Local Focus Module’ led by LEAP members and HFHR, in which participants discussed strategies for use of the Roadmap Directives to challenge bad practice such as practical restrictions on access to the case

file which made it difficult to prepare for trial or challenge detention effectively. The next training will take place in June 2015 in partnership with the Hungarian Helsinki Committee.

**Fair Trials / Clifford Chance lunchtime seminar, Warsaw** – On 21 November 2014, Clifford Chance’s office in Warsaw, together with Fair Trials, held a lunchtime seminar on the Roadmap Directives. Introduced by Bartosz Kruzewski of Clifford Chance, LEAP Advisory Board member Mikolaj Pietrzak and Clifford Chance litigation partner Marcin Cieminski and spoke about challenges in the Polish implementation of the Directives and the possibilities for litigation at the CJEU.

**Survey on Access to the case file** – Fair Trials and members from the LEAP Advisory Board have been working on a survey requesting specific information on issues with access to the case file in the Member States. We hope to begin compiling a report on the findings in January 2015 once a quorum of responses has been received. We have responses from Lithuania, Hungary, Croatia, the Czech Republic, Germany and Poland. We would welcome responses from other countries and are attaching the questionnaire to this message.

**Fair Trials Intervention** – Fair Trials has recently submitted a third-party [intervention](#) to the European Court of Human Rights (ECtHR) in the case of [Vizgirda v. Slovenia](#), raising question of when a violation of Article 6(1) and 6(3)(e) ECHR may arise due to the provision of interpretation in a language other than the native language of the accused (in this case, the provision of Russian interpretation to a Lithuanian). Fair Trials argued that Articles 2 and 5 of the Interpretation and Translation Directive showed a consensus on the need for careful evaluation of interpretation needs and positive quality control measures, such that it was not satisfactory to adopt a third language solution and simply expect it to work; a structured assessment of the suspect’s understanding of that language was needed, and subsequent control had to be exercised by the courts to ensure the ensure the adequacy of the interpretation provided.

### **New procedural rights package**

**New European Parliament Rapporteurs** – Following the European Parliament elections, there have been changes of rapporteurship on the [new procedural rights package](#). The new Rapporteurs for the proposed directives are, for Children, Ms Caterina Chinnici (S&D), for Legal Aid, Mr Dennis De Jong (GUE/NGL), and for Presumption of Innocence, Ms Nathalie Griesbeck (ALDE). The Rapporteur for the establishment of the European Public Prosecutor’s Office (EPPO) is Monica Macovei (EPP). Fair Trials has attended meetings with the new rapporteurs in order to ensure that productive relationships are established or maintained.

**Fair Trials speaks at LIBE Committee hearing** – On 11 November 2014 the Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament convened a [hearing](#) on judicial cooperation in criminal matters focusing on the ‘Roadmap’ on procedural rights of suspects and accused persons (the ‘Roadmap’). The hearing took stock of the development of the Roadmap and provided a forum for debate about the new legislative proposals. Fair Trials’ Head of Law Reform Libby McVeigh addressed the Committee during the meeting, highlighting cases of fair trials violations in the EU, and warning against opting for broad, minimum common denominator wording just to achieve compromise and advising MEPs to learn from the implementation of the already adopted Roadmap Directives to inform the negotiation of the next three measures.

**Safeguards for Children** – In September, Fair Trials and Children’s Rights Alliance for England (CRAE), published a [position paper](#) on the proposed EU Directive establishing procedural safeguards for children suspected or accused in criminal proceedings. The paper reviews the [Commission’s proposal](#) and the [Council’s general approach](#). Fair Trials met with Ms Catarina Chinnici MEP (S&D, Italy) to discuss the position. Ms Chinnici presented her [draft report](#) to the LIBE Committee on 19 November, and Fair Trials has since met with Shadow Rapporteurs to discuss potential amendments before the Committee votes on the report.

**Presumption of Innocence** – In November, Fair Trials and LEAP have published a [position paper](#) on the proposed Directive strengthening certain aspects of the presumption of innocence in criminal proceedings. Fair Trials also met with Ms Nathalie Griesbeck MEP (ALDE, France), the European Parliament’s rapporteur on this file, to discuss our position. On 4 December 2014 the Council published its [General Approach](#), which merged the rights to silence and privilege against self-incrimination and rephrased the approach to reversal of the burden of proof as presumptions of fact or law. The onus is now on the European Parliament to take a robust position which we will seek to inform through further discussions with Rapporteurs based on our position paper.

**Legal aid** – The Rapporteur on the proposed directive on Legal Aid, Dennis de Jong, published his [draft report](#) to the LIBE Committee of the European Parliament on 26 November. Fair Trials has circulated initial observations and will be publishing a fuller position in the new year. The report aims for a more comprehensive protection of legal aid than envisaged by the Commission’s proposal and Fair Trials welcomes this. We understand that there is some resistance from the Member States, some of which are minded to narrow the scope of the directive, such that it may be some time before the Council publishes its General Obligation.

**Call for cases** – as ever, Fair Trials remains very keen to obtain case examples demonstrating the need for the proposed measures on the presumption of innocence, legal aid and children suspects. Please note that short summaries, anonymised if necessary, are satisfactory. We are also keen to collect examples of good practice which can be used to inform the development of the proposed directives and regional standards. Please do [let us know](#) if you have any such cases from your Member State.

### **Fair Trial rights in the Balkans**

**Roundtable Meeting on Fair Trial Rights Protection in the Western Balkans** – On 29 October 2014, Fair Trials met with civil society and legal practitioners from Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia to formally discuss (i) fair trials challenges in the region; (ii) the potential use of the EU accession process as a lever for driving criminal justice reform; and (iii) how local NGOs could work with Fair Trials to achieve these ends. Fair Trials will prepare a communique summarising the discussion, which will be published in early 2015. Challenges discussed in the meeting and the communique include issues such as routine violations of the right to information and the right to be presumed innocent, lack of independence of appointed counsel in the police station, and inconsistent domestic integration of European and EU standards relating to these topics despite ongoing reforms of domestic criminal and procedural codes to facilitate EU accession.

### **Legal updates**

**First CJEU reference on the Roadmap Directives** – The Amtsgericht Laufen (a first-instance court) in Germany has made a [reference](#) (all languages – full reference available [here](#) in Dutch only) to the Court of Justice of the EU on the Roadmap Directives. It asks whether the [Interpretation and Translation Directive](#) is to be interpreted as precluding a rule of national law providing that an accused may lodge its appeal only in the language of the national court (a difficult requirement to comply with if translation services are not available, particularly bearing in mind tight appeal deadlines). The second question, harder to interpret, whether the [Right to Information Directive](#) concerns relating to service of decisions for the purposes of appeal deadlines. We will provide an update once the CJEU has given its preliminary ruling on the questions.

**Baytar v. Turkey, 14 November 2014** – In this [judgment](#) the Court concluded that there had been a violation of Article 6 (3)(e) – right to the assistance of an interpreter – and Article 6 (1) – right to a fair hearing – of the European Convention. The case concerned an individual in police custody who did not have sufficient command over the national language and was not provided with the assistance of an interpreter. As a consequence, the defendant had not been put in a position to appreciate fully the consequences of waiving her right to keep silent

and the right to legal assistance.

**Peltereau-Villeneuve v. Switzerland, 18 October 2014** – The Court [found](#) a violation of Article 6 (2) ECHR – presumption of innocence – as a result of terms used by the public prosecutor in a discontinuance decision finding that the criminal proceedings for sexual abuse were time-barred. The Court found that the terms used in that decision left no doubt as to the public prosecutor’s opinion that Mr Peltereau-Villeneuve was guilty.

**Melo Tadeu v. Portugal, 23 October 2014** – The court [found](#) a violation of Article 6 (2) – presumption of innocence – of the Convention as a tax enforcement procedure was initiated against Ms Melo in spite of her acquittal in criminal proceedings for tax fraud. The Court found in particular that the tax authorities and the administrative courts hearing the case had disregarded Ms Melo’s acquittal in criminal proceedings, casting doubt on the well-foundedness of her acquittal, incompatibly with her right to be presumed innocent.

## **PRE-TRIAL DETENTION**

**Update on new pre-trial detention project** – Work continues on the [major new pre-trial detention project](#) launched in June, focusing on pre-trial detention decision-making in practice. Our [partners](#) are gathering data on pre-trial detention decision-making processes and the use of alternatives in their jurisdictions through in-depth surveys of defence practitioners, monitoring detention hearings, reviewing case files and interviewing prosecutors and judges. Defence lawyer surveys are largely complete and hearing monitoring and case file reviews are ongoing into the first quarter of 2015. Please do [let us know](#) if you know of any cases demonstrating the problems relating to pre-trial detention decision-making.

**Fair Trials and LEAP speak at ERA detention conference, Strasbourg** – On 6-7 November 2014, Advisory Board members Diana-Olivia Hatneanu and Dominique Tricaud, Alessio Scandurra from Antigone (the Italian partner on the pre-trial detention project) and Maria Rogan, of the board of the International Penal Reform Trust (the Irish partner on the pre-trial detention project) joined Fair Trials’ Libby McVeigh and Rebecca Shaeffer to speak at ERA (Academy of European Law) [seminar](#) on improving conditions related to detention, the first of this second series on this topic. The meeting focused on the roles of the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR), as well as that of national courts, in improving conditions related to detention and was attended by judges, prosecutors, lawyers, ministry officials and officials from prison administrations from across Europe.

## **EUROPEAN ARREST WARRANT**

**Extradition reform debate in the UK** – The long-running debate surrounding the UK’s decision to opt out of pre-Lisbon EU criminal justice measures finally drew to a close. The Government had announced its intention to exercise its right of opt-out and immediately opt back in to 35 of those measures. A debate was held in the House of Commons on 10 November 2014 relating to the regulations implementing the 11 of those measures which still needed implementing, and this presented by the Government as the opportunity to approve the so-called ‘opt-back-in’, which caused some consternation and led to the holding of a further debate the following week. On 6 November Fair Trials published a [news piece](#) to remind concerned parties of the need for a sensible discussion about the reform of the EAW, as the debate began to get lost in political considerations relating to the EU in general. Fair Trials, which always maintained that the UK should use the opt-out decision as an opportunity to secure reform of the EAW at EU level, hopes that the discussion will have placed the question of reform of the EAW Framework Decision on the agenda within Brussels.

**Irish High Court, 1 July 2014 – EAW / denial of fair trial** – This [judgment](#) predates the scope of this bulletin but we report it due to its interesting content. The High Court refused execution of an EAW from Romania on account of having substantial grounds for believing the trial at which she had been convicted 16 years ago

amounted to a flagrant denial of justice. The Court held that at the material time – before Romania's accession to the EU – there had been a wide practice of discrimination against Roma in Romania; there were reasonable grounds for believing that the respondent, who was Roma and illiterate, had suffered discrimination such that her imprisonment will mean that she is being treated less favourably than a person who is not of her ethnic origin. Whilst the decision is a rare application of the 'flagrancy' test, the case remains restricted to its specific facts and the court warned against its use as a more general precedent.

**Torreggiani methodology** – Named after the cases in the UK in which extradition to Italy was refused due to the European Court of Human Rights (ECtHR) case *Torreggiani v. Italy*, finding violations of Article 3 in Italy's prisons due to overcrowding, the term refers to a conversation begun at Fair Trials' meeting on 18 June 2014 in London on CJEU litigation. The idea was to ensure that extradition practitioners in each country are aware of ECtHR Article 3 findings against other Member States, to ensure that they are able to rely on these to resist extradition, with a view to persuading national courts to refer the point to the CJEU. Members have notified the decisions [Tunis v. Estonia](#) and [Vasilescu v. Belgium](#). LEAP Advisory Board member Diana-Olivia Hatneanu has provided expert evidence on Romanian prison conditions in EAW cases in the UK, with effect: see this [judgment](#) refusing surrender on this basis.

## 1 DECEMBER 2014

**"Lisbonisation" happened** – 1 December 2014 saw the expiry of the transitional provisions contained in Protocol 36 of the Treaty on the Functioning of the European Union. These had preserved the legal situation relating to criminal justice measures adopted between 1999 and 2009 on the basis of the old 'third pillar', including the European Arrest Warrant (EAW): the EU Commission had no enforcement powers and the Court of Justice of the EU (CJEU) could hear references for preliminary rulings only if its jurisdiction had been accepted by the Member States (which only 18 did). The much-discussed expiry of the transitional measure means LEAP members can now seek references from any court or tribunal on the interpretation of the EAW Framework Decision and other third pillar measures if they were not able to before (see, in this regard, the [communiqué](#) issued after the CJEU litigation meeting in June 2014). It also means the Commission can act upon information brought to its attention, including complaints from LEAP members, relating to Member States' non-compliance with these measures, which include the European Supervision Order (allowing the return of a suspect to his home state pending trial, which the Commission [reported](#) in 2013 had not been widely implemented to date).

## NOTES OF ADVICE

**New notes of advice published** – Fair Trials wishes to thank LEAP members Satu Wartiovaara, Asya Mandjukova and Arturas Gutasukas for their input into the newly published Notes of Advice for Finland, Bulgaria respectively. Fair Trials depends upon LEAP members' expertise to produce these guides which provide helpful information to individuals arrested across the EU, and looks forward to publishing more during LEAP's next three years.

## INTERPOL

**INTERPOL on the agenda at the Parliamentary Assembly of the Council of Europe** – On 1 October 2014, Jago Russell, Fair Trials Chief Executive, spoke at a side-event of the Parliamentary Assembly of the Council of Europe hosted by Pieter Omtzigt (Netherlands, EPP); Marietta Pourbaix de Lundin (Sweden, EPP); Kimmo Sasi (Finland, EPP) and Mailis Repts (Estonia, EPP) on the politically-motivated misuse of INTERPOL. Other speakers included Willima Browder, the UK 'Magnitsky' campaigner wanted by Russia; Kimmo Sasi, who spoke of his dissatisfaction at INTERPOL's handling of the case of Petr Silaev; and Alma Shalabayeva, the wife of a controversial Kazakh politician who was summarily removed from Italy further to a Kazakh request circulated through INTERPOL. The event preceded the decision of the Bureau of PACE (its umbrella decision-making body) to proceed to a report on the abuse of the INTERPOL system, mandating its Legal Affairs Committee to study the issue further to a

[motion](#) adopted in June (background [here](#)). Mr Bernd Fabritius, a member of the German Bundestag (CDU party, part of the EPP group), a former defence lawyer with experience of extradition cases, has been appointed as Rapporteur.

**Appointment of new Chair of the Commission for the Control of INTERPOL's Files** – Under pressure of growing international concern at the work of, [INTERPOL has recently appointed Nina Vajić](#), a professor of Human Rights Law at the University of Zagreb in Croatia and a former judge at the European Court of Human Rights, as Chairperson of the Commission for the Control of INTERPOL's Files (CCF). The CCF handles complaints against INTERPOL 'wanted person' alerts, and has been criticised for the way it works; at the PACE event mentioned above, Finnish MP Kimmo Sasi spoke of his disappointment in the CCF's handling of the case of Russian refugee Petr Silaev, stating that he had 'no confidence in its decision-making'. Fair Trials has written to Ms Vajić to welcome her to her role and express its hope that the CCF will assert a stronger oversight role and develop the equality of arms of its procedure during her mandate.

**Fair Trials discusses INTERPOL abuse** – On 26 September 2014 Libby McVeigh, Fair Trials' Head of Law Reform, appeared on a panel at an [event at the Frontline Club](#) on the abuse of the Interpol Red Notice system. Libby discussed the case of Nikolay Koblyakov, a French citizen of Russian origin who was arrested and detained in Bulgaria further to an INTERPOL alert seeking his arrest on a Russian fraud charge. Fair Trials [wrote](#) to the Bulgarian Minister of Justice to express serious concerns about the prospect of Mr Koblyakov's extradition to Russia. Subsequently, the courts refused the extradition request and Mr Koblyakov has been able to return to Paris, though his movement remains restricted by the INTERPOL alert which led to his arrest. Mr Koblyakov participated remotely in the European Parliament event mentioned below.

**INTERPOL seminar at Oslo Freedom Forum** – Fair Trials co-hosted a [seminar](#) at the Oslo Freedom Forum about abuse of INTERPOL with the Norwegian Helsinki Committee. The seminar, *Demonising Dissidents – How INTERPOL is being abused by dictatorships*, examined how INTERPOL systems are applied by countries around the world to persecute refugees, journalists and peaceful political demonstrators. During the seminar, activists, including [Benny Wenda](#), [Michelle Betz](#) and [Bahar Kimyongur](#), who had all been subject to a Red Notice for political reasons, told their stories on how this abuse of INTERPOL alerts had influenced their lives.

**INTERPOL deletes information concerning Petr Silaev from its files** – In October 2014, Fair Trials [received a letter](#) from the Commission for the Control of INTERPOL's Files (CCF) explaining that INTERPOL had eventually deleted the information on its files concerning Russian refugee Petr Silaev. Fair Trials is delighted at this news but remains seriously concerned by the manner in which the case was handled, in particular the failure to disclose crucial information submitted by the Russian authorities, to provide a reasoned decision and to inform Mr Silaev of the outcome until after the Russian Interior Ministry announced the result on its website.

**Victims of INTERPOL abuse speak at European Parliament event** – On 8 December 2014, Fair Trials' Patron Judith Sargentini MEP hosted an [event at the European Parliament](#) to hear from victims of INTERPOL misuses. Speakers included an Azeri refugee in the Netherlands wanted for public order offences relating to his work as an election observer; Alma Shalabayeva (see PACE event above); Nikolay Koblyakov (see Frontline event above) and Turkish-Belgian activist [Bahar Kimyongur](#). Bahar's intervention was particularly poignant in that it was his interruption of a meeting at the European Parliament 15 years ago which led the Turkish authorities to seek his arrest for terrorism through INTERPOL, leading to his arrest in three countries and months of deprivation of liberty. The event took place one year on from the statement of the European Commission, in response to pressure from MEPs in 2013, [that it would hold reform talks with INTERPOL](#). No update was ever received on these talks, and Ms Sargentini expressed her wish to take the issue up again under the new legislature.

## FAIR TRIALS & LEAP GOVERNANCE

**LEAP strategy meeting** – On 7 October 2014, the LEAP Advisory Board met with Fair Trials in Brussels to review the new network structure agreed following consultations in 2013 and to discuss key aspects of LEAP's work plan for the next three years. Fair Trials will update LEAP on the conclusions of the meeting at the Annual Conference in February 2015. **Rebecca Shaeffer goes on maternity leave** – Rebecca Shaeffer will take maternity leave from January. Rebecca's replacement will take forward the work on the pre-trial detention project and Rebecca's duties in relation to the Advisory Board.

**New Fair Trials website online** – After months of hard work from our Campaigns and Communications Officer, Alex Mik, Fair Trials new [website](#) is now online. The website is structured in three key parts targeted at the three main audiences: (1) a '[Fair Trials Defenders](#)' section for lawyers and other justice professionals, with a new improved [LEAP page](#), featuring an Advisory Board section which includes profiles of Advisory Board members; (2) a '[Campaigns](#)' section for members of the public wishing to learn about Fair Trials work; and (3) an '[Arrested – Need Help?](#)' section with the country specific Notes of Advice, now browsable through drop down question boxes instead of scrolling through PDF files.

**Fair Trials and Clifford Chance pro-bono relationship recognised at European event** – Fair Trials and Clifford Chance have been [awarded the 2014 Partnership Award](#) at the PILnet 2014 European Pro Bono Forum. The award recognises the close working pro bono relationship that Fair Trials and Clifford Chance have developed, including the development of the [Justice in Europe Defence Rights Map](#), using local knowledge and analysis from Clifford Chance offices across the EU and EU candidate countries in the Balkans.