



Welcome to the first LEAP quarterly bulletin of 2016, an update on LEAP issues over the past (very busy) three months and other matters of interest.

We hope that these newsletters are interesting to you, so [please do give us feedback](#) on the style and content.

We look forward to hearing from you!

Jemima and Gianluca
Fair Trials Europe

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LEAP NEWS

LEAP Annual Conference 2016

The LEAP annual conference took place 5 – 6 February 2016 in Budapest and was a great success! More than 60 LEAP members attended the meeting and exchanged ideas, challenges and opinions on defence rights issues. The conference was divided in three parts:

1. Brussels update and European focus,
2. litigating criminal justice issues/applying EU law in practice, and
3. current criminal defence challenges in the EU.

Each section began with a panel discussion and was followed by a work shop session to allow network members to discuss these issues in detail with their counterparts from other jurisdictions.

In section (1) Baerbel Heinkelmann spoke about the Roadmap Directives, and another panel concentrated on the challenges posed by the large number of migrants to the EU with regards to fair trial rights, and finally the last panel explored current threats to defence rights such as evidence and plea bargaining. Workshop sessions on legal aid, vulnerable suspects and refugees, asylum seekers and criminal justice followed.

In section (2) Alex Tinsley spoke about LEAP's role in litigation, Udo Krause gave an account of defending the first case related to the Directives at the CJEU, Dr Katalin Hipp provided insight from the perspective as the Head of Section, Metropolitan Chief Prosecution Office, Budapest, and finally Dr Adam Bodnar, Human Rights Commissioner of the Republic of Poland, spoke about his experience and how his office work on pressing for a correct application of the Directives and supporting fair trial rights. The ensuing workshop groups focused on examining the Roadmap Directives, Detention and detainees' rights and cross border focuses in daily practice.

In session (3) Kirill Koroteev (Memorial & European Human Rights Advocacy Centre, Russia) spoke about plea bargaining cases at the ECtHR and Zdravka Kalaydjieva, Judge at the ECtHR, gave her opinion on remedies by the Strasbourg Court. LEAP Advisory Board Member for Belgium, Christophe Marchand, spoke about issues related to secret intelligence torture evidence in criminal proceedings, and Libby McVeigh spoke about how plea bargaining is practiced very differently in EU Member States. This session was complemented by break-out groups on evidence, plea bargaining and judicial remedies.

Finally, a jog around the island and a networking dinner complemented the event and provided ample opportunity to network with new and old colleagues in the LEAP community.

If you attended the event and have not yet provided feedback online, we would ask you to do it [here](#). We require further feedback for funding purposes. Thank you!

LEAP report *The Road Ahead*

On 16th March, we launched a report, titled *Defence Rights in Europe: The Road Ahead*, which describes the extensive work carried out by LEAP over the past two years. The full report is available [here](#). The report focuses on the following three areas of LEAP's work:

1. **Contribution to EU policy and legislation**, including an overview of LEAP's previous contributions to the now agreed Presumption of Innocence Directive and the Children's Directive and the ongoing contributions to the Proposed Legal Aid Directive.
2. **Making EU laws on fair trial rights work in practice**, providing an overview of LEAP's work under the implementation strategy which includes (a) identifying implement nation challenges arising in practice; (b) informing developments in national legislation; (c) providing training to defence practitioners; and (d) sharing expertise with national and regional courts.
3. **Identifying emerging fair trial rights issues**, including LEAP's recent work to flag current fair trial rights issues which should be on the agenda of legislators across the EU, including (a) the increasing use of plea bargaining within criminal justice systems across the EU and the adequacy of safeguards in place to prevent unjust outcomes; (b) the inter-relationship between migration and criminal justice; (c) challenges relating to evidence, and particularly problems associated with the increasing role of electronic evidence and, in terrorism cases, the use of confidential evidence; and (d) the excessive and unjustified use of pre-trial detention, in relation to which Fair Trials (with significant LEAP input) will soon be publishing a report calling for EU legislative action to address this as a matter of urgency.

European Parliament event

The Road Ahead was launched at an event kindly hosted by Fair Trials patron and Member of the European Parliament, Nathalie Griesbeck. Representatives of each of the Brussels-based EU institutions—including Ingrid Breit (DG Justice), Jan Zwart (Dutch Presidency) and Dennis de Jong MEP—spoke alongside LEAP members (Katazrzyna Wisniewskia, Milen Shopov and Christophe Marchand), highlighting the importance of LEAP's work and the importance of the network's commitment to ensuring high protections of defence and fair trials rights for all people suspected or accused of a crime in the EU.

One of the liveliest discussions related to the ongoing negotiation of the Proposed Legal Aid Directive, with Mr Zwart and Mr de Jong illustrating the tensions between the positions of the Council and the Parliament—particularly on the scope of the measure—but demonstrating a commitment to reaching agreement in the coming months. The LIBE Committee of the European Parliament has commissioned an impact assessment to gather more evidence relating to the cost of legal aid and implications that broader provisions on legal aid would have for the Member States. Thank you to all the LEAP members who participated in this survey!

LEAP Working Group on Judicial Remedies: Call for expressions of interest

The LEAP Advisory Board has agreed to the creation of a LEAP Working Group to examine the judicial remedies available in EU Member States for violations of procedural rights, particularly in the context of implementation of the Roadmap Directives. The Working Group will be chaired by Vania Costa Ramos (LEAP Advisory Board member, Portugal) who will work with members to (a) develop a questionnaire which examines the availability and effectiveness of judicial remedies for procedural rights violations; (b) collate responses to the survey from LEAP members in different Member States; (c) analyse the responses and produce a report on the findings; and (d) present the report at the LEAP Annual Conference in early 2017.

We hope to convene a Working Group of 10-15 LEAP members who will commit to providing comments on the draft questionnaire, completing the questionnaire in relation to their own Member State, attending a roundtable meeting to discuss the findings of the research in Brussels in October 2017 and contributing to the draft report.

LEAP members who are interested in participating in this Working Group should inform Jemima Hartshorn (Jemima.Hartshorn@fairtrials.net) by 15th April 2016.

[Letters of Rights survey](#)

As you all know, we are conducting a new and important project with the Hungarian Helsinki Committee on the implementation of the obligations under the Right to Information Directive relating to the provision of Letters of Rights. The overall aim of the project is to improve the quality and accessibility of information provided to suspects about their rights at the time of arrest. We hope to identify examples of transferable best practices through research into international standards and global practices and this will be set out in a report published in the summer. For this purpose, we have designed an online survey, and would like to ask you all to send us the Letter of Rights as used in your jurisdiction to Jemima.Hartshorn@fairtrials.net, if you have not already done so. Please also fill in our survey [here](#).

Thank you to all LEAP members who have already filled in the survey and sent us examples of Letters of rights!

[Submission on implementation of Directives in Bulgaria to Ministry of Justice](#)

LEAP members from Bulgaria have written to the Bulgarian Ministry of Justice to raise concerns about the inadequate implementation of the Interpretation and Translation Directive and the Right to Information Directive. Further information about the specific problems can be found in guest posts by LEAP members available [here](#) and [here](#). Advisory Board members Roumen V. Petrov and Asya Mandzhukova from Mandzhukova, Shopov, Petrov Law Firm took the lead on drafting the submission with Fair Trials input, and the final submission was signed by seven other Bulgarian LEAP members.

In this submission we highlighted for example that the Interpretation and Translation Directive has been inadequately implemented, particularly given the lack of independence of interpreters and translators, the inadequate assessment of interpretation needs and the lack of any robust quality assurance mechanism. In relation to the Right to Information Directive, Bulgaria's Criminal Procedural Code does not comply with the obligation to provide a Letter of Rights to suspects arrested or detained. Further, the obligation to provide access to the case-file, without derogation, in order to challenge the lawfulness of arrest or detention has not been accurately transposed.

This submission was sent to Ekaterina Zaharieva, Minister of Justice, in a call for action to address these concerns. It was also copied to the European Commission which is responsible for overseeing implementation of EU law. You can read the submission [here](#).

[Alex Tinsley leaving Fair Trials](#)

As most of you already know, Alex Tinsley, our LEAP coordinator, has left Fair Trials to complete his training to become a barrister in London. We thank him for his great work and wish him all the best for the future. He has now joined LEAP as a member, so we will stay in close contact.

Please contact Jemima, Legal and Policy Officer in Brussels, for all LEAP-related work and developments in your country, as she will coordinate the LEAP work going forward. Her email is: Jemima.Hartshorn@fairtrials.net.

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[JUSTICE IN EUROPE - POLICY UPDATES](#)

[Adoption of Presumption of Innocence Directive](#)

The Presumption of Innocence Directive has now been adopted. The deadline for implementation by Member States has been confirmed as 1 April 2018. As you can read in the LEAP report, [The Road Ahead](#), LEAP has had a strong impact in ensuring that critical safeguards were agreed upon and we look forward to working with LEAP members to ensure effective implementation in due course.

[Legal aid Directive file](#)

The negotiations on the Proposed Legal Aid Directive continue, with notable differences between the positions of the Council and the European Parliament. While the Parliament is keen to expand the scope of the measure to include people who are not detained, the Council is strongly resisting this.

LEAP has argued that any Directive on legal aid should mirror the scope of the Access to a Lawyer Directive, the main argument being that the right to access a lawyer is ineffective, if it cannot be exercised by suspects too poor to afford a lawyer privately from the beginning of the proceedings and only after national authorities have decided over their eligibility to legal aid. The negotiations are currently focusing on the eligibility for legal aid in EAW cases. LEAP has pushed for provision to be made for legal aid to ensure assistance by a lawyer in the issuing state, as envisaged in Article 10(4) of the Access to a Lawyer Directive, pointing out that the availability of advice from issuing state lawyers can help the executing state identify issues and assess defence arguments in an efficient manner.

The Parliament is now conducting an Impact Assessment Survey, asking stakeholders such as LEAP members to provide input how much the financial and social cost would be if the scope were not expanded.

LEAP has continued to feed into these discussions by providing real examples of systemic problems related to legal aid to the Commission and the MEPs working on this file. The importance of these contributions to understand the daily challenges of the defence in exercising their rights, was recently emphasised at the LEAP event in the European Parliament by different panellists, especially MEP Dennis De Jong.

[Pre-trial detention](#)

LEAP continues to be engaged on the issue of pre-trial detention as well. Several LEAP members participated last year in focus groups organised by CSES, the consultancy firm producing an Impact Assessment Study on pre-trial detention legislation for the European Commission. While the findings of this study will not be publicised, we had the opportunity to participate in a seminar convened by CSES in January, during which the findings of the 10-country research project on pre-trial detention decision-

making, coordinated by Fair Trials since June 2014, were presented to the European Commission. Most of the country reports setting out the findings of our research have now been published and can be found online: [England and Wales](#), [Greece](#), Hungary (in [English](#) and in [Hungarian](#)), [Italy](#), [Lithuania](#), Romania (in [English](#) and in [Romanian](#)) and [Spain](#). The regional report will be launched in an event at the European Parliament in Brussels on 26 May 2016.

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[JUSTICE IN EUROPE - DEFENCE RIGHTS JUDGMENTS AND LITIGATION](#)

[Update on Advocate General Bot's opinion in Aranyosi and Căldăraru and LEAP response](#)

In March the Advocate General at the CJEU, Mr Bot, gave his [opinion](#) (only in French) on two cases that had been referred to the CJEU for preliminary rulings, [Aranyosi](#) and [Căldăraru](#), involving critical questions regarding the European Arrest Warrant (EAW) and the threshold for refusing to surrender on fundamental rights grounds. Both cases were transferred from German courts and concerned European Arrest Warrants for requests to surrender to Hungary (pre-trial) and Romania (following a conviction in an in-absentia trial). Defence in both cases have raised that the detention conditions in Romania and Hungary respectively are so poor and prisons so overcrowded that detention there would constitute a violation of Article 3 European Convention of Human Rights. (For more information see [here](#)).

The Opinion by the Advocate General Bot suggests that if detention conditions in the issuing state are raised as a concern during extradition proceedings, the executing judicial authority cannot ask for more information to assess whether there is a risk of the person being detained in 'inhumane' conditions. Further, the judicial authority cannot refuse to execute the EAW on the basis of a risk of a violation in the requesting state of the human rights of the requested person, even if it concludes that there will be a risk of inhuman or degrading treatment. The Opinion invites the Court to find that Article 1(3) of the **European Arrest Warrant** Framework Decision does not provide an implicit ground to refuse surrender, suggesting that if that had indeed been the intention of the legislator, it would have been made clear.

In response, Fair Trials and 19 LEAP Advisory Board Members sent a [public letter](#) to Věra Jourová, *Commissioner for Justice, Consumers and Gender Equality*, urging her to re-emphasise the Commission's long-standing position that mutual recognition should not operate to undermine human rights; should the Court follow the reasoning of AG Bot, commit to introducing legislation to make explicit that the Arrest Warrant Framework Decision and other mutual recognition measures are subject to proper protection for fundamental rights; and commit to effective EU-wide legislation as a matter of urgency to tackle the unjustified use of pre-trial detention.

Further information can be found [here](#).

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LEGAL TRAINING

Fair Trials and LEAP have continued to train young defence lawyers across the EU on the Roadmap Directives. We trained 40 lawyers in Bucharest in January and would like to thank LEAP members Vania Costa Ramos, Asya Mandzhukova, Alejandro Gámez Selma and our project partners from APADOR-CH for providing such inspiring and informative local focus modules. In March we conducted another training for 40 lawyers in Greece. Thank you to LEAP members Nicola Canestrini, Ann Spiteri, Demetra Sorvatzioti, George Pyromallis and Dimitrios Giannaloupoulos for providing excellent training for the participants.

The next training will take place at Brunel University in April, and we look forward to working with LEAP members on delivering this training to lawyers from Belgium, France, Ireland, Luxembourg and the UK. We are also very grateful to Dimitrios Giannaloupoulos for his generous support in arranging for the training course to be hosted within the Law Faculty at Brunel University.

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PUBLICATIONS AND SEMINARS

[Improving Conditions Related to Detention, European Academy of Law](#)

In February, Legal and Policy Officer Jemima spoke at the conference on Improving Conditions Related to Detention in Strasbourg, organised by the European Academy of Law. She focused her contribution on the findings of the pre-trial detention research project which Fair Trials has been coordinating with research partners over the past two years (see above). Project partners and LEAP members—Karolis Liutkevicius (Lithuania), Andras Kadar (Hungary) and Bas Leeuw (Netherlands)—also contributed to the seminar with presentations on their respective research findings.

[ICCL event on access to a lawyer](#)

In January, Libby McVeigh spoke at an event hosted by the Irish Council for Civil Liberties on the right of access to a lawyer in criminal proceedings, highlighting how recent developments in the case-law of the European Court of Human Rights and in EU law have strengthened the right to a lawyer across Europe.

[ECLA \(UK\) event on the right to interpretation and translation](#)

In March, Libby McVeigh spoke at an event hosted by the European Criminal Law Association (UK) on the Interpretation and Translation Directive. The event provided the opportunity to examine why EU minimum standards on the provision of language assistance had become necessary, and to take stock of the current status of implementation of the Interpretation and Translation Directive, particularly in the UK.

[International Juvenile Justice Observatory](#) | [news piece](#) |

In January, Jemima Hartshorn spoke at an event in the European Parliament, hosted by the International Juvenile Justice Observatory, on children's rights in criminal proceedings with a particular focus on alternatives to detention. Jemima used this opportunity to speak about the difficulties identified in our pre-trial detention research project that result in an underuse of alternatives and how they can be addressed when implementing the Children's Directive.

The news piece on this event can be found [here](#).

[Vision restored? Reform of INTERPOL to strengthen protection of human rights | news piece | publication](#) |

Libby McVeigh contributed a chapter for a publication launched by the Foreign Policy Centre in February, titled *Institutionally blind? International organisations and human rights abuses in the former Soviet Union*. The publication examines whether international organisations (**Council of Europe's Parliamentary Assembly** and **European Court of Human Rights**, the **European Union**, the Organisation for Security and Cooperation in Europe (**OSCE**), and **INTERPOL**) in the post-Soviet space are complying with their human rights commitments, and shows how these institutions are under constant attack both from within and without post-Soviet states. In her contribution, Libby analyses the recent reforms **undertaken by INTERPOL**, illustrating that despite INTERPOL not existing to protect human rights but rather to facilitate cooperation between police forces across the globe, it has taken notable steps to uphold its constitutional commitments to political neutrality and fundamental rights.

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