

Legal Experts Advisory Panel

Welcome to the LEAP Quarterly Bulletin #2 of 2015, an update on LEAP's work over the last three months and other matters of interest. We want these updates to be useful for you, so please do [let us know](#) what you like or what you don't like. If the original email was filtered into your junk mail folder and you only received the link directly from Alex Tinsley, please let us know.

It has been a busy three months, as the length of this email will attest to. You can jump to the different sections using the navigation below.

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[Fair Trials Scoreboard consultation launched](#): Fair Trials has asked for LEAP members' views on a potential Fair Trials Scoreboard, an ambitious new idea for a project measuring fair trial rights protection according to objective criteria, enabling ranking and/or comparisons between countries, incentivising reform by low performers and fostering international discussion. We are keen to LEAP members' views as to the benefits, risks and potential content of such a project and have sent round a Consultation Paper (attached). LEAP members are asked to submit their views by **31 August 2015** using the paper or this [online questionnaire](#). Thanks to those who have completed this and we look forward to hearing from others.

[Roundtable on EPPO and ne bis in idem](#): on 5 June 2015 a small group of practising lawyers from LEAP met to discuss new cross-border justice topics. One was the proposal for a European Public Prosecutor's Office, with an introductory presentation from LEAP Member Dr Marianne Wade. Lawyers discussed their concerns surrounding the absence of centralised rules on exclusion of evidence and the variable levels of protection arising from the lack of harmonisation of procedural rights. Another was the *ne bis in idem* principle, with an introductory presentation from Prof. Anne Weyembergh. Participants cited numerous cases showing the challenges in ensuring the application of this principle, and discussed the emerging issues around its application to extradition cases. A communiqué will be published and circulated shortly.

[New Notes of Advice Published](#): Three new Notes of Advice have been published (Croatia, Austria and Canada), bringing the total number of jurisdictions covered to 32. Fair Trials would like to thank LEAP members Ines Bojic (Croatia) and Stefan Schumann (Austria) as well as Herbert Smith Freehills and Canadian lawyer Dean Embry for their help in developing the notes. All Fair Trials' Notes of Advice are available to be consulted or downloaded [here](#).

[Implementation strategy](#): We continue to work with individual LEAP members on delivering the [LEAP strategy for implementation of the Roadmap Directives](#) through litigation, training, participating in national legislative processes, European Commission complaints and generating awareness (summaries available in [English](#), [French](#) and [German](#)). We have, for instance, written letters to the Spanish police and government and the Lithuanian Parliament, and made comparative and EU law submissions to the Supreme Courts of Spain and Belgium. These activities which has created new relationships, ideas and tactics which enable us to work ever more effectively to support you in activities relating to the Directives. Please [get in touch](#) if you have litigation or other matters we can help with, or forward the link to the strategy to any interested parties – especially Bar Associations, but also researchers, police, prosecutors, interpreters' bodies, etc. These relationships are increasingly important as we approach the transposition deadline for the Access to a Lawyer Directive, viewed by many LEAP members as the most important, a little over one year from now.

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[Policy updates](#)

[Update on the procedural rights measures:](#) The three proposals put forward in November 2013 – on the presumption of innocence, legal aid and special safeguards for children in criminal proceedings – are all now in ‘trilogue’ (the negotiation between the three EU institutions), the Council and European Parliament having both finalised their positions in the past few months. Since the last Quarterly Bulletin, the negotiations on the Children’s Directive have progressed, with discussions underway on key points like the requirement for mandatory access to a lawyer and video-recording; the European Parliament adopted its radical report on the presumption of innocence, adopting a number of proposals put forward by Fair Trials and LEAP; and, following a joint letter signed with other LEAP members recommending an expansion in scope in advance of a tight vote, the European Parliament adopted a report in proposing to extend the proposed legal aid measure to cover all cases (not just those deprived of liberty) and to ensure ‘ordinary’ legal aid throughout the proceedings, as well as ‘provisional’ legal aid at the very early stages. **CALL FOR CASES:** Individual cases help us make the case for strong protections in the context of these negotiations; if you have any relevant cases, in particular concerning children in criminal proceedings, please [let us know!](#)

[Pre-trial detention project update:](#) The pre-trial detention research Fair Trials is coordinating is in a new, exciting phase. The research partners, from 10 EU Member States (EL, ES, HU, IE, IT, LT, NL, PL, RO, UK), many of them LEAP members, have concluded their data collection and presented their preliminary findings at the mid-term meeting held in May in London. Common problems across many of the different countries include: (i) formalistic reasoning of pre-trial detention orders that do not respond to the specific case or suspect; (ii) alternatives to pre-trial detention being underused by judges as they do not trust the available options; and (iii) review and appeal mechanisms for pre-trial detention orders often not providing real oversight but just affirming previous decisions. The Partners are now in the process of drafting the Country Reports outlining the issues and recommending solutions. In September all Partners and some LEAP members from some other EU countries will be invited to meet and discuss the findings and the extent to which they are representative of problems regarding the judicial decision-making process across the EU. Date, venue and the scope of invitations for this meeting are yet to be confirmed. **CALL FOR CASES:** We are planning to complement the research with compelling case studies recorded as videos that demonstrate EU-wide problems relating to pre-trial detention decision-making, a key part of our efforts to obtain EU action in this area, so please [let us know](#) if you have such cases!

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[Defence rights litigation](#)

[Judgments on the Roadmap Directives – any more, let us know!:](#) In May 2015, the Brussels Court of Appeal gave a decision based upon, inter alia, the Interpretation and Translation Directive, finding that

the latter required the translation into the court's language of a Danish judgment and case file from a related investigation, which was material to the establishment of the identity of subjects in a trafficking case and was therefore essential for the defence. Lawyers at Jus Cogens, the firm of LEAP Advisory Board member for Belgium Christophe Marchand, represented the suspect. Earlier in 2015, the French Court of Cassation had given a [decision](#) finding that the failure to order a translation of an essential document would not lead to the nullity of subsequent procedural acts unless it was established that this produced an infringement of defence rights such as the loss of a right of appeal. Thanks to LEAP Member James Brannan for notifying us of this case. CALL FOR CASES / DECISIONS: If you are aware of any cases raising issues under / judgments concerning the Roadmap Directives in your jurisdiction, please [let us know!](#)

[Opinion of Advocate General Bot on the Roadmap Directives](#): On 7 May 2015 Advocate General Bot (France) issued his [Opinion in Case C-216/14 Covaci](#), the first reference for a preliminary ruling on the Roadmap Directives. The AG makes interesting general remarks, suggesting that the Directives should be approached robustly in order to achieve their purpose of strengthening confidence between EU Member States, to the advantage of both cooperation and individual rights. On the first question referred, the AG first considers the requirement in German law to submit appeal documents in German, finding that this is not inconsistent with the Interpretation & Translation Directive, provided that a person who does not speak and understand the language can enjoy the assistance of an interpreter under Article 2 of the Directive (the right to translation under Article 3 being restricted to documents emitted by the competent authorities, as opposed to the defence) to formulate their appeal. On the second question referred, the AG finds the requirement in German law for a person resident outside the jurisdiction to designate a person with Germany for service of a criminal penalty order, combined with a two-week deadline for lodgment of an appeal against such an order, compatible with the Right to Information Directive, provided that this procedural mechanism does not prevent the person concerned enjoying the full appeal window, counted from the time when they actually become aware of the order, through one means or another. Judgment is expected after the summer break so we hope to notify LEAP members in the next quarterly bulletin.

[European Court of Human Rights judgment in A.T. v Luxembourg](#): In this case, taken by LEAP Advisory Board member for Luxembourg Roby Schons, and in which Fair Trials intervened, the European Court of Human Rights ('ECtHR') found a violation of Article 6(3)(c) of the Convention due to (1) the absence of a lawyer in police questioning, which, though the suspect denied the offences, nevertheless prejudiced the fairness of the proceedings as a whole, and (2) the absence of a possibility for the suspect to confer privately with his lawyer prior to the hearing by the investigating judge. Read the [judgment](#) here. On the second point, as invited by Fair Trials in its [intervention](#), the ECtHR referred to the Access to a Lawyer Directive, the first example of interplay between the Roadmap Directives and the ECtHR case-law. Fair Trials' Legal & Policy Officer Alex Tinsley has written about the judgment [here](#). Cross-border practitioners should note the suspect had been extradited under an EAW, meaning that the extradition took place on the basis of a conviction now confirmed to have been contrary to Article 6

ECHR (again, the first example we are aware of). A referral to the Grand Chamber is still possible, and we will update LEAP on any further developments.

[Fair Trials intervenes in legal aid / access to information case](#): In June 2015, Fair Trials submitted a third party intervention in the case [Magyar Helsinki Bizottsag v Hungary \(No 2\)](#), a case taken by LEAP member the Hungarian Helsinki Committee in respect of the refusal, by certain police offices in Hungary, to disclose information as to the appointments of legal aid lawyers made by police. The requests, made with a view to identifying patterns of repeat appointments creating commercial relationships between some legal aid lawyers and the police, had been refused on the basis of the private character of lawyers' activities. Fair Trials' [intervention](#), drawing attention to the United Nations Principles and Guidelines and the proposed EU Directive on legal aid, argued that enabling 'watchdog' NGOs to scrutinise legal aid systems is an important indirect guarantor of Article 6 rights for those assisted through such systems, and that any countervailing privacy interests of lawyers, if it existed, could not justify a restriction on access to information under Article 10 of the Convention.

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[Legal training](#)

[Fair Trials / LEAP training in Budapest – another soon in Vilnius](#): On 19-21 June 2015, Fair Trials held a further training workshop on the Roadmap Directives in Budapest, together with its partner for this training, LEAP member the Hungarian Helsinki Committee (HHC) (news story [here](#)). The training was attended by some 40 lawyers from Hungary, Croatia, Slovenia and the Netherlands, with training on the Roadmap Directives on Saturday and "Local Focus Modules" on their application within the Member States led by HHC, LEAP Advisory Board member for Croatia, Lidija Horvat, and the Fair Trials team. The next residential training will take place in Vilnius on 23-25 October 2015 in Vilnius, Lithuania, in partnership with LEAP member the Human Rights Monitoring Institute and with other LEAP members acting as national experts. We are still accepting applications from lawyers from Sweden, Finland, Denmark, Estonia and Latvia. More information and the application form are available [here](#). Please share this link with anyone you think may be interested in applying!

[Fair Trials training materials](#): We remain keen to hear feedback from LEAP members on the package of training materials we have made available online. These include (1) [video training courses](#), including modules on the first two Roadmap Directives and the Court of Justice of the EU, for which a number of Advisory Board members have filmed video forewords; (2) written Toolkits ([one](#), [two](#), [three](#)) on the same two measures and Using EU law in practice. We intend to produce more of these measures but are keen to hear from LEAP members as to whether we could improve the format, length, accessibility or other aspects of the materials. The priority is to ensure that they are genuinely useful for daily practice. Please [let us know](#) your thoughts on this, and please do forward on the materials to contact within bar associations, universities etc.

[Fair Trials continues Academy of European Law \(ERA\) cooperation](#): In the last quarter Fair Trials' Legal & Policy Officers Jemima Hartshorn and Alex Tinsley both spoke at ERA events. Jemima spoke at ERA's latest seminar on improving conditions relating to detention in Strasbourg; Alex spoke at the ERA training for judges and prosecutors on the EU Charter, alongside LEAP member Adam Bodnar. You can see his presentation [here](#).

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INTERPOL

[Fair Trials seeks answers from INTERPOL over Al-Jazeera arrest in Germany](#): Following the arrest in Germany of Al-Jazeera journalist Ahmed Mansour at the request of the authorities of Egypt, despite INTERPOL refusing a Red Notice against him, Fair Trials has [written to](#) INTERPOL asking it to clarify what involvement it had in the case. We had previously written to INTERPOL one year ago to warn of the dangers of Egyptian misuses of the INTERPOL system against journalists, asking what systems it had in place to prevent abuses of the system impacting on individuals before its own decision had taken place. New safeguards adopted announced to Fair Trials in March 2015 appear not to have prevented the arrest of Mr Mansour, leading to a number of [questions](#) in the German Bundestag as to the respective roles of INTERPOL and national authorities like the Federal Criminal Police of Germany, which has now several times arrested people in cases considered political by INTERPOL. Fair Trials has written to the speaker of the Bundestag's Legal Affairs Committee to encourage further investigation into this question and will update LEAP on further developments.

[INTERPOL announces new asylum policy](#): At a hearing of the Legal Affairs and Human Rights Committee of the Council of Europe in Yerevan, Armenia on 19 May 2015, INTERPOL confirmed the existence of a new policy whereby it will delete a Red Notice against a person who is confirmed to have been recognised as a refugee under the 1951 Convention relating to the Status of Refugees. Fair Trials, whose Legal & Policy Officer Alex Tinsley also spoke at the hearing in Yerevan, has long campaigned for this change and is keen to welcome it, though the details of the policy have not been made public in writing and important points still need resolving, not least the applicability of the policy for extradition refusal decisions based on parallel norms of extradition law. For a fuller comment on this development, see our [news story](#). If LEAP members have clients to whom they believe this new policy should apply, please [let us know](#). Please also feel free to cite our news story, which includes a reasonably close record of INTERPOL's oral statement, in your submissions.

[Fair Trials event on INTERPOL at UNODC Congress, Qatar](#): On 15 April 2015, Fair Trials hosted a panel discussion at the Crime Congress of the United Nations Office on Drugs and Crime in Doha, Qatar ([more here](#)). On the panel were guests Tomasz Kodziczsky, of the Dutch human rights firm Prakken d'Oliveira, and Mitre Georgiev of the Centre for Peace Studies in Zagreb. The event, attended by a number of law enforcement professionals from, inter alia, Qatar, the United States and Norway, was a great opportunity to continue the discussion around reform of INTERPOL with new stakeholders.

[Fair Trials speaks at ISRCL conference in Edinburgh](#): In June 2015, Fair Trials' Legal & Policy Director, Libby McVeigh, spoke at the annual conference of the International Society for the Reform of Criminal Law, an international non-governmental association of judges, legislators, lawyers, academics and government officials. Libby's speech introduced new audiences to the issues, focusing on key areas of reform like the need for an effective means of independent redress.

[Prendi \(Aleks Kola\) v Albania \[2015\] EWHC 1809 \(Admin\)](#): This [judgment](#), commented on Fair Trials' website by LEAP member Thomas Garner, concerned a first-instance extradition decision which had relied upon a Red Notice published by INTERPOL as evidence of identity of the requested person, the stating that the alert emanated from a 'reliable source'. The High Court found that, even if INTERPOL were accepted as reliable (which was not decided), there was no evidence that that the actual sources of the information in the Red Notice (photographs, biometric details), i.e. unspecified authorities in Albania, were themselves reliable. Issues of this kind have arisen before in litigation – in [Rihan v Canada](#), a Canadian refugee authority had relied on a red notice to exclude a person from refugee status, stating that it came from a 'reliable, reputable and objective source', a decision quashed by the Federal Court which found that an authority should look behind the Red Notice. If you have a case in which the reliability of Red Notices is at issue, do [let us know](#).

[INTERPOL Working Group to meet in July](#): We have previously detailed how INTERPOL, following long-standing calls for reform from Fair Trials, had tasked a Working Group ('GTI') with reviewing its rules at every level with a view to recommending reforms to the General Assembly. The Group is meeting on 1-3 July 2015, with part of the meeting on 3 July 2015 open to civil society organisations. Fair Trials' Chief Executive, Jago Russell, will speak to the conference to make the case for reform to the National Central Bureaus. We will update LEAP members further in the next quarterly.

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[VIDEO: Why INTERPOL needs to change in just two minutes](#): Fair Trials Campaigns and Communications team has produced a short campaign film on INTERPOL, featuring excerpts

from several interviews with victims of injustice. The video is a great introduction to the issues and the need for change – please forward the link to anyone who may be interested.

Other cases of interest

[Irish Supreme Court decision on 'judicial authority'](#): In a [judgment](#) of 25 June 2015 in *Minister for Justice & Equality v McArdle*, the Supreme Court of Ireland confirmed a judgment of the High Court finding that a European Arrest Warrant (EAW) was valid when issued by a Public Prosecutor in the Netherlands, that institution falling within the scope of the term 'judicial authority' in the Irish legislation construed in light of the EAW Framework Decision. The judgment is therefore consonant with the UK Supreme Court's decision in *Assange v Swedish Prosecution Authority*. The judgment notes that the breadth of the term 'judicial authority' in the EAW Framework Decision was obvious, such that no reference to the Court of Justice of the EU was necessary.

[François v. France \(ECHR\), 23 April 2015 \(judgment\)](#): Relating back to a period when lawyers' role in police custody was fairly limited, the judgment concerns a decision by a police officer to place in custody, on suspicion of offences of resisting an agent of public order, a lawyer who had been providing legal assistance to a minor at that police station, following an altercation surrounding the lawyer's request for the child to be medically examined. The Court finds that the decision, which involved a full body search of the lawyer, was contrary to Article 5(1)(c) of the Convention as it was not justified and proportionate, and in fact pursued an ulterior motive.

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alex.tinsley@fairtrials.net

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