

LEAP Quarterly Report Autumn 2013

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Welcome to the fourth and final LEAP Quarterly Report of 2013. As always, we invite your feedback on these bulletins to ensure that they are as useful as possible. Do **let us know** what you think – what information would be more helpful, and what could you do without?

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FTI and LEAP News

Interpol Report Published: Following **meetings with INTERPOL** in mid-September, Fair Trials published a **major report** showing how countries including Russia, Sri Lanka, Turkey, Belarus, Indonesia, Iran and Venezuela are abusing INTERPOL to persecute refugees, journalists and peaceful political activists. Despite INTERPOL's commitment to neutrality and human rights, the report shows how INTERPOL's review mechanisms are not vigorous enough to prevent this abuse, with severe implications for the people concerned: damage

to reputation, loss of work, inability to travel and even arrest and extradition. Echoing the concerns raised by the report, six MEPs (Barbara Lochbiler, Baroness Sarah Ludford, Kristiina Ojuland, Judith Sargentini, Charles Tannock and Rui Tavares) [wrote](#) to the EU Commission calling for swift action to be taken to ensure that INTERPOL's systems cannot continue to be abused at the expense of human rights. Coverage of the report featured in [the Guardian](#), [the Daily Telegraph](#), [the EU Observer](#), [The Washington Post](#), as well as news outlets in Sri Lanka, Nigeria, Belarus and Turkey. An electronic copy of the report should now have been received by all LEAP members and we are very grateful to all of you who have helped to disseminate the report amongst your networks.

EU Criminal Defence Rights Trainings: In October and November, we hosted three of our four residential training workshops for criminal defence lawyers on the practical and strategic use of the Roadmap Directives. We are very grateful to those LEAP members who have participated in the workshops, as expert trainers or participants, and to those who have helped to advertise the workshops through their own networks. During the first three trainings in Budapest, Warsaw and Strasbourg, we trained 90 practitioners from 18 member states. The final workshop in the series will be held on 13-14 December in Cambridge, UK and will train participants from the Denmark, England and Wales, Finland, Ireland, the Netherlands and Scotland. Once the programme is completed, 120 lawyers from 25 member states will have received training. We are delighted to have received funding to continue delivering training on EU criminal procedure law during 2014 and 2015.

LEAP Annual Conference 2013: Our [Annual Conference](#) was held in London on 3-4 October, and we were very pleased to welcome so many of you there. Our discussions focused on the remaining legislative work at the EU level on criminal procedural rights, including legal aid and vulnerable suspects, as well as setting the agenda for the post-Stockholm legislative period, including pre-trial detention. The contributions made by 70 LEAP members representing 23 member states were very helpful for Fair Trials and we hope those of you who participated enjoyed the discussions. The conclusions drawn at the meeting and in previous meetings will be compiled into a report to be launched in the European Parliament (Brussels) in 2014.

Post-Stockholm Priorities: As we enter the final year of the implementation period of the Stockholm Programme, the attention of the EU institutions and civil society has turned to the priorities for the future. In November, the the Directorate-General for Justice of the European Commission hosted a major conference – the [Assises de la Justice](#) –attended by representatives of Member States, academic institutions and non-governmental organisations (including Fair Trials and several LEAP members). Alongside the conference, the EU Commission launched a consultation process, inviting interested parties to make submissions setting out priorities for the future development of EU policy in all areas of justice. In response to the call for submissions, Fair Trials published [a new LEAP brochure](#) for distribution at the conference, setting out four priorities for the future as identified

through LEAP meetings over the past four years. The brochure calls for the EU's four priorities to be:

- (i) Ensuring that its new laws on defence rights are used consistently in all Member States and that the Commission takes enforcement proceedings against those countries which continue to violate these basic rights;
- (ii) Continuing its commitment to defence rights and agree effective new measures on legal aid, protections for children and other vulnerable suspects, and the presumption of innocence;
- (iii) Developing effective legal safeguards against the use of excessive and unjustified pre-trial detention; and
- (iv) Delivering much-needed reforms to the European Arrest Warrant to ensure that extradition does not violate human rights, as well as making sure that its laws on defence rights provide a sound base for mutual cooperation.

In addition, following a meeting in October at which four LEAP members representing NGOs met with Libby McVeigh to discuss priorities for the post-Stockholm period, we made [a joint submission](#) which was submitted to the Assises conference on 21-22 November 2013 setting out similar priorities to those set out in the LEAP brochure.

Advancing Defence Rights Meetings: We have now concluded our series of "Advancing Defence Rights" meetings bringing together experts to discuss implementation of the first three laws under the Procedural Rights Roadmap (the Directive on the right to interpretation and translation, the Directive on the right to information and the Directive on the right of access to a lawyer). Our final meeting was held in Amsterdam on 20 September, bringing together lawyers from Denmark, Finland, the Netherlands and Sweden. The [communiqué](#) from our meeting in Lithuania, attended by participants from Czech Republic, Estonia, Latvia, Lithuania and Poland, was published in October. Communiqués for the final meetings in Paris, London and Amsterdam will be published in the next two months.

Local Experts Meetings on Pre-Trial Detention: The [communiqué](#) from our [expert meeting on pre-trial detention](#) in Lithuania was published in October, and we will shortly be publishing the communiqué from our final meeting on pre-trial detention in France. We have also been carrying out follow-up work arising from our previous pre-trial detention communiqués, including working with the Hungarian Helsinki Committee on a joint response to a letter received from Hungary's Deputy Public Prosecutor in response to our [communiqué](#). This is of particular significance given the recent legislation in Hungary which removes the limits on the length of pre-trial detention for certain cases (see below).

European Arrest Warrant Meetings in Brussels: On 17 October 2013, seven LEAP members joined Fair Trials' Head of Law Reform, Libby McVeigh, for a discussion of reforms to the

European Arrest Warrant, both at the domestic and EU-level, and the way in which LEAP members could work together to push forward the reform agenda. All participants in the morning meeting then attended the [ALDE EAW Hearing at the European Parliament](#) and contributed to the discussions based on their own experience of working on extradition cases. The hearing – “The European Arrest Warrant: Issues and Solutions” – was convened in order to contribute to the European Parliament [legislative initiative report](#) on the European Arrest Warrant, led by Baroness Sarah Ludford MEP (ALDE), a Patron of Fair Trials (see further below).

Joint letter on pre-trial detention: In early September, FTI coordinated [a joint letter on pre-trial detention to Viviane Reding](#), Vice President of the European Commission and Commissioner for Justice, signed by 21 other NGOs. This letter calls for the Commission to collect statistical data relating to pre-trial detention to ensure future decisions on EU action in this area are made on an informed basis. The response received from Ms Reding in October confirmed that there are no immediate plans to legislate in this area and that focus will instead remain on implementation of existing measures, including the European Supervision Order.

Consultation on LEAP Structure: Following the LEAP Annual Conference in October, we launched a consultation on the future of LEAP. During its first five years, LEAP has grown significantly and now has [125 members from 28 Member States](#). This expansion has implications for the structure of our meetings and for the broader operation of the network and we therefore considered it necessary to review the LEAP structure and make those changes necessary to ensure it continues to fulfil its function as it grows. We are grateful to all of you who have contributed to the consultation process and will share the conclusions with you in early 2014.

[Recent Developments](#)

New Procedural Rights Package: On 27 November 2013, the European Commission [published a package of five new measures](#) to establish minimum fair trial standards across the EU. The package includes three draft directives (on legal aid, children and the presumption of innocence) and two recommendations (on legal aid and vulnerable suspects), and represents the next stage of [the procedural rights roadmap](#) established in 2009. Further details of the proposals are available [here](#). Fair Trials and LEAP have repeatedly called for the continuation of action to establish effective minimum standards on fair trial rights in the EU, including in the new LEAP brochure described above. We look forward to working with the EU Institutions, other civil society organisations and members of LEAP during negotiations on the new laws, to ensure they provide the human rights protections needed to establish an area of freedom, security and justice within Europe.

EU Report on the European Arrest Warrant: Following the ALDE hearing in the European Parliament in October 2013, [a draft report](#) commissioned by Baroness Sarah Ludford, MEP

on reform of the European Arrest Warrant was published on 19 November. The draft report sets out proposals for new legislation which applies to all mutual recognition measures, including the Framework Decision on the European Arrest Warrant, to incorporate new protections including (i) the introduction of a ground for refusal based on fundamental rights, (ii) the requirement of a proportionality assessment by the issuing state, (iii) a consultation procedure between the issuing and executing states, and (iv) the provision of legal remedies. Fair Trials welcomes the European Parliament's review and hopes that the recommendations made in the final report will result in significant reforms which enable the EAW to fulfil its purpose whilst also ensuring that the rights and freedoms of those it affects are adequately protected. As the report will not be finalised until the first quarter of 2014, we will continue to work with MEPs involved in the process to ensure that the report sets out robust recommendations to ensure that the legislative outcomes are as strong as possible

New Hungarian law on pre-trial detention: Despite the EU-wide movement for improved standards of pre-trial detention, and the findings of our [communiqué](#) earlier this year which pointed to the need for reform of Hungary's excessive use of pre-trial detention, Hungary is unfortunately moving backwards on pre-trial justice. In November, [the Hungarian Parliament adopted legislation](#) abolishing the previous maximum limit of four years of pre-trial detention for all accusations involving a potential sentence of 15 years or more. Fair Trials, together with LEAP members at the Hungarian Helsinki Committee, have recently written to the Deputy Public Prosecutor's Office in Budapest to voice our concerns about this development.

Case law developments:

***Martin v. Estonia* App No 35985/09 (Judgment of 30 May 2013 – became final on 7 October 2013) ([link](#))** A suspect aged 18 was accused of murder in respect of facts that took place when he was 17. He was arrested and detained, and was assisted by a lawyer appointed by his family. He denied the offences. However, by two 'waiver' letters, the suspect purportedly dismissed his own lawyer and chose to be represented by a legal aid lawyer identified by the prosecution. Whilst this lawyer was acting, the suspect made incriminating admissions and attended a reconstruction at the scene of the crime, where further incriminating evidence was obtained. He subsequently sought to retract the admissions, specifying that he had been threatened with detention among violent inmates in order to procure his admissions. At trial (where he was represented by the family-appointed lawyer) the court convicted him, relying on all the evidence. On appeal, the Court of Appeal excluded the pre-trial statements but relied on 'general knowledge' acquired as a result of the admissions and convicted him on the basis of other evidence. The ECtHR found that it was not established that the applicant's purported 'waiver' of the lawyer of his initial choosing was unequivocal and, on that basis, found a breach of Article 6(3)(c) ECHR (right to be assisted by a lawyer of one's own choosing). It found, consequently, a breach of the right

to a fair trial guaranteed by Article 6(1). Recalling its *Salduz* case-law, it found that, although the Court of Appeal had excluded the pre-trial statements, the Court of Appeal's decision nevertheless showed reliance on information obtained as a result of the breach of defence rights, the effects of which had not been completely undone.

***Oreb v. Croatia* App No 20824/09 (Judgment of 31 October 2013) ([link](#))** A suspect was arrested and detained on suspicion of drug trafficking. His detention was extended for a period totalling two years. The courts extended his detention on the basis of the risk of reoffending, with reliance several times being placed upon the fact that he had been 'convicted' of analogous offences, when in fact he had been the subject of parallel criminal proceedings which only toward the end of the detention period became final convictions. In this regard, the ECtHR found violations of Article 5(3) ECHR, in that mere allegations cannot be referred to as proof of a propensity to reoffend, and of Article 6(2), in that the reliance on parallel proceedings implied that the allegations in those other proceedings were well-founded even before any final determination had been reached, thereby infringing the presumption of innocence. [Note: the Croatian Criminal Procedure Act has been reformed since the material time]

***Sakalis v. Ministry of Justice (Lithuania)* (UK Supreme Court, [2013] UKSC 71, 20 November 2013) ([link](#))** The Ministry of Justice of Lithuania (MOJ) issued European Arrest Warrants (EAWs) seeking the return of a person who had been convicted of offences but absconded before serving any part of the sentence. It was contended that the MOJ was not a 'judicial authority' capable of issuing EAWs within the meaning of the EAW Framework Decision. The appeal followed the case of *Assange* earlier in 2013, in which it had been found that the concept of a 'judicial authority' was to be interpreted as covering a public prosecutor, in so far as EAWs issued for the purposes of prosecution were concerned. The Supreme Court found that the concept of 'judicial authority' was not limitless. In relation to EAWs issued for the purposes of executing a sentence, it found that a ministry of justice, when simply endorsing the prior decision of the court that issued the sentence or an equivalent judicial body, could be regarded as a 'judicial authority'. By contrast, a ministry of justice which had the power to issue an EAW of its own motion or at the request of an executive agency such as a prison cannot be regarded 'judicial authority'. Applying this approach, it found the EAW to be invalid, in that the decision had been taken by a prison on a discretionary basis, with a further discretionary decision by the MOJ.

If there are significant judgments from your Member State concerning the EAW, pre-trial detention, interpretation and translation during criminal proceedings, access to publicly-funded legal assistance and the treatment of vulnerable suspects, please [let us know](#).

WE WANT TO HEAR ABOUT YOUR CASES!

Individual cases are fundamental to FTI's success in campaigning for reform of national and cross-border criminal justice systems. Human Stories enable us to explain the causes of injustice to policy-makers and gain support for vital reforms which help many other people.

We depend upon our LEAP Members for information about individual cases. When LEAP Members contact us about a case, there are several ways we can work alongside them to achieve an outcome while also highlighting the systemic issue. Previous examples include:



Petr Silaev

- Russian refugee arrested on politically-motivated INTERPOL alert
- LEAP Member Markku Fredman emailed to notify us about the case
- FTI challenged the INTERPOL alert and raised media profile of case



Natalia Gorczowska

- Polish mother facing disproportionate extradition under an EAW
- LEAP Member Mike Evans contacted us after taking case to ECtHR
- FTI raised profile of the case and included in EAW reform materials

We are very grateful to our network members for bringing such cases to our attention – please continue to [let us know](#) about the following kinds of cases:

- **INTERPOL abuse**: Cases involving political abuses of INTERPOL's 'wanted person' alerts, especially involving refugees, journalists, political activists and campaigners. These can be your own cases or simply others you have heard about in your country's media.
- **Interpretation and translation**: Cases where fair trials issues have arisen because of the failure to provide interpretation or translation – of particular interest with the Directive on interpretation and translation becoming fully effective in October 2013.
- **Access to information / documents**: Cases where suspects are not informed of their rights as suspects, or where they have not been given access to case-file documents in timely and effective manner.
- **Access to a lawyer**: Cases where access to a lawyer is denied or restricted, particularly during police questioning, or where reliance is placed on evidence obtained in the absence of a lawyer.
- **Vulnerable suspects**: Cases in which the suspect is particularly vulnerable, for example due to mental health or age, and been unable to understand and participate in the proceedings because of the authorities' failure to take special measures.
- **Legal aid**: Cases where problems with access to publicly-funded legal assistance have meant that suspects cannot effectively exercise their rights.