

LEAP Quarterly Report Spring 2014

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Welcome to the LEAP Quarterly Report for Spring 2014. This is a particularly long report as there have been many interesting developments since we last wrote to you, but please do use the Overview panel to take you directly to the different sections.

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?

OVERVIEW

[FTI and LEAP news](#)

[Brussels office](#): Fair Trials has opened a new office in Brussels as a hub for our EU advocacy.

[New LEAP Structure and Terms of Reference](#): New LEAP Structure and Terms of Reference to be launched from 1 May 2014.

[Stockholm's Sunset](#): Fair Trials' new report on the current state of EU justice, plus our launch event for the report in Brussels.

[European Court of Human Rights Interventions](#): Fair Trials has filed three recent third party interventions relating to the procedural rights of suspects in cases before the ECtHR.

[LEAP meeting on the Presumption of Innocence](#): LEAP members recently met in Brussels to discuss the new Commission proposal for an EU Directive on the Presumption of Innocence.

[Submissions on the implementation of the Right to Information Directive](#): We have recently made two submissions, jointly with LEAP members, to the Lithuanian Parliament and the UK Home Office respectively on the proposed implementation of the Right to Information Directive.

[Final Advancing Defence Rights and Local Expert Group Communiqués published](#): The concluding communiqués following LEAP meetings in Paris, London and Amsterdam are now available.

[Recent developments](#)

[European Parliament EAW report](#): Parliament issues strong report to the Council recommending reforms of the EAW in response to Fair Trials' campaigning.

[INTERPOL campaign developments](#): EU and Council of Europe bodies respond to the pressure building for reform of INTERPOL red notices, led by Fair Trials.

[Post-Stockholm developments](#): EU lawmaking bodies debate and plan for the future of EU justice policy as the 5 year Stockholm Programme draws to a close.

[European Investigation Order adopted](#): After 4 years of negotiations, the European Investigation Order has now been finalised.

EU Commission Report on Implementation of Common Rules on Detention: The Commission reports on poor implementation of EU Directives on the transfer of prisoners, probation and alternative sanctions, and supervision of pre-trial release.

Reforms to the EAW adopted in the UK: The Anti-Social Behaviour, Crime and Policing Bill, which contains important reforms to the operation of the EAW in the UK, has been given royal assent.

Case developments: Selected developments from EU Member States' national courts.

Requests for Information

LEAP Member Bios

European Arrest Warrant refusals: We are collecting case-law from across the EU on EAW refusals on human rights grounds.

Implementation questionnaire: We are still gathering information about EU Member States' implementation of the adopted Roadmap Directives.

Information on Pre-Trial Detention: A researcher in Hungary is seeking information on the treatment of homeless defendants who have reached the statutory limit of pre-trial detention.

Human stories: Fair Trials is actively seeking real-life cases on pre-trial detention, presumption of innocence, and cases involving children.

FTI and LEAP News

Brussels office: Fair Trials is pleased to announce that our Brussels office opened on 1 April 2014. Our Law Reform officer Alex Tinsley is now running the new office as a hub for our EU advocacy and the co-ordination of LEAP. We hope to see many of you there for meetings and events soon. Contact details for Alex at the Brussels office are: **[Fair Trials International, 85 Avenue des Nerviens, Box 10, B-1040, Brussels, 00 32 2 743 85 93.](#)**

New LEAP Structure and Terms of Reference: As you know, in October 2013 we launched a consultation on the future structure of LEAP in recognition of the fact that over the past 5 years since its creation, LEAP has grown significantly and it seemed important to consider how best to ensure that the aims and objectives of the network continue to be met as it continues to grow. Through responses to the consultation and a focus group meeting with a small number of respondents to the consultation, we are confident that LEAP members support our decision to establish a LEAP Advisory Board which will provide support to Fair Trials in developing the annual strategy and priorities for LEAP; comprise 28 members, each of whom will be the key LEAP contact within each legal jurisdiction; and support Fair Trials in developing and delivering LEAP's activities. We shall shortly be circulating further details of the Advisory Board membership and new Terms of Reference, which will apply from 1 May 2014, and it would be great if you could return the signed membership forms to us by the end of May.

Stockholm's Sunset: Fair Trials International and LEAP [published a major report](#) in early March which reviews the achievements under [the Stockholm Programme](#) – a five-year plan for EU justice and home affairs policy from 2010 to 2014 – and sets out key priorities identified by LEAP members including: (1) effective implementation of the Roadmap Directives; (2) completion of planned work on fair trial rights; (3) minimum standards on pre-trial detention; and (4) reform of the European Arrest Warrant. *Stockholm's Sunset* was launched at an [event in the European Parliament](#) on 4 March. Before a large audience including LEAP, EU Institutions, regional and international NGOs and bar associations, the event featured a panel which included Jago Russell and Libby McVeigh of Fair Trials, together with MEPs Baroness Sarah Ludford, Judith Sargentini and Brigit Sippel; Olivier Tell, Head of the Criminal Justice Unit, DG Justice; and Lorenzo Salazar of the Ministry of Justice in Italy.

European Court of Human Rights Interventions: Fair Trials has recently intervened in three ECtHR cases against EU Member States which raise issues relating to the Roadmap Directives. We hope to use third party interventions to encourage the ECtHR to issue robust decisions which will guide Member States in their implementation of the Roadmap Directives.

- a) The case of [Cándido González Martín and Plasencia Santos v Spain](#), challenges Spain's use of the *secreto de sumario* regime, which allows all or part of the information regarding the criminal charges and investigation to be kept confidential from the defendant and his lawyer. We submitted that the right to be informed begins much earlier than the beginning of the trial, and should be enforceable irrespective of whether the trial has been completed and the impact on the overall fairness of the proceedings can be assessed. We also outlined the factors – including the extent of independent judicial oversight of the secret investigation – which should be considered in order to determine whether the use of secrecy powers violates the right to a fair trial or not.
- b) The case of [A.T. v Luxembourg](#) concerns a conviction obtained after the denial of access to a lawyer in the police station. In the intervention, we relied in part on the Access to a Lawyer Directive to argue for strong safeguards to protect against ineffective and unwilling “waivers” of the right to a lawyer, and towards a robust and broad exclusionary remedy for statements and evidence obtained in the absence of a lawyer, especially where limited access is a systemic deficiency.
- c) The case of [Čierny v Slovakia](#) requires the Court to consider whether a waiver of the right to a lawyer and the right to silence was validly given. Relying on information provided by LEAP members, the recent EU Directives on the [right of access to a lawyer](#) and the [right to information](#), and the Court's case-law, we suggested that the Court should take a particularly careful approach to the issue of suspects purportedly ‘waiving’ their rights. The intervention sets out a framework for assessing whether a

waiver was provided (i) willingly and unequivocally, and (ii) knowingly, and calls upon the Court to find a violation of Article 6 where a waiver has not been effectively given and any resulting prejudice, including but not limited to the use of an incriminating statement as the basis of a conviction, has not been completely cancelled out by safeguards in the trial process.

LEAP meeting on the presumption of innocence: On 4 March, following the “Stockholm’s Sunset” report launch at the European Parliament, LEAP members reconvened for a preliminary meeting to discuss the proposed [EU Directive on the presumption of innocence and the right to be present at trial in criminal proceedings](#). Due to the fact that the proposal is still at an early stage, discussion focused on the need for clearer protections of the presumption of innocence across the EU. The communiqué summarising the discussion is now [available on our website](#).

Submissions on the implementation of the Right to Information Directive: Fair Trials has recently made two submissions, jointly with LEAP members, on the implementation of the Right to Interpretation Directive in Lithuania and the UK respectively. We anticipate that, with the June 2014 deadline for transposition looming, many Member States are currently considering similar implementing legislation for the Right to Information Directive, and encourage all LEAP members to see if similar opportunities for Fair Trials to comment might arise in your jurisdiction.

- a) Informed of the opportunity by LEAP member Karolis Liutkevičius, in March we submitted an [opinion](#) to the Legal Committee of the Lithuanian Parliament regarding its consideration of the proposed legislation transposing the Right to Information Directive, highlighting the need for the provision of more comprehensive information about rights, in more accessible language, particularly with regard to the right to silence. It also encourages the Legal Committee to ensure that defendants’ access to case materials essential to arguing against the imposition of pre-trial detention is safeguarded, as provided for in the Right to Information Directive.
- b) In April, together with JUSTICE (a UK-based NGO member of LEAP), we made a [submission](#) in response to a consultation published by the UK Home Office requesting views on the proposed amendments to Codes C and H of the Police and Criminal Evidence Act 1984 (“PACE”) and the Notice of Rights and Entitlements (“NoREs”) in order to implement the EU Right to Information Directive. While the proposed amendments to the PACE Codes address many of the obligations set out in the Right to Information Directive, the submission highlights concerns relating to (i) the omission of certain information from the list of rights notified to suspects and the unclear language used to describe certain rights, including the right to silence; (ii) the timing of the provision of information about the accusation; (iii) the proposed derogations from the obligation to provide information about the accusation; and (iv) the failure to

implement the obligation to provide access to ‘all material evidence’ as required by Article 7(2) of the Right to Information Directive.

Communiqués from “Advancing Defence Rights” (ADR) and Local Expert Group Meetings:

Following the conclusion of Fair Trials’ series of five ‘Advancing Defence Rights’ meetings in 2013, communiqués from the meetings in [Paris](#), [London](#), and [Amsterdam](#) have now been published. These communiqués memorialise discussions held in June, July and September about the state of defence rights covered by the Roadmap Directives in each of the member states represented, and contain updates about the current state of implementation of the Directives where relevant. These have proved valuable resources in our advocacy on implementation of the Directives, including in strategic litigation. The [communiqué](#) following our final local experts’ group meeting on pre-trial detention, held in Paris in June 2013, has also been published.

Recent Developments

EU Report on the European Arrest Warrant: In February, the [European Parliament adopted a report calling for reform of the European Arrest Warrant \(EAW\)](#), answering Fair Trials’ persistent calls for improvements to the European Union’s flagship judicial cooperation system, and placing the onus on the Commission to respond. The report followed a [plenary debate](#) in which several of Fair Trials’ cases (most represented by LEAP lawyers) were discussed, makes important legislative recommendations, including a requirement that Member States’ judicial authorities conduct a proportionality check before issuing decisions like the EAW, and consider the risk of human rights infringements when executing them. Unfortunately, the initial response of the Commission was not positive. [Addressing the European Parliament](#), Vice-President Viviane Reding, the Commissioner for Justice, stated that reform of the EAW would be ‘premature’, since the Commission will in any case from December 2014 have new enforcement powers to ensure Member States comply with EU laws which may help address some of the issues. We hope that the new Commissioner for Justice, to be appointed later this year, will adopt a more positive response.

INTERPOL campaign developments: The Parliamentary Assembly of the Council of Europe (PACE) and the European Commission have recognised our concerns regarding the political abuse of INTERPOL’s Red Notice system. In January, [PACE adopted a report on the accountability of international organisations for human rights violations](#), highlighting concerns about INTERPOL, the international police body, with reference to Fair Trials’ client Petr Silaev, and calling on its member countries to exercise caution in arresting those subject to INTERPOL alerts. In December 2013, two weeks after the publication of our in-depth report – [Strengthening Respect for Human Rights, Strengthening INTERPOL](#) - the European Commission [agreed to hold talks with INTERPOL](#), responding to concerns raised by several MEPs about refugees and exiles in Europe. We have already worked with a number of LEAP members on cases involving politically-motivated Red Notices – including Christophe Marchand (Belgium), Federico Romoli (Italy) and Goncalo Boye (Spain) who are

representing a Belgian citizen sought by a politically-motivated Red Notice from Turkey. We hope that you will continue to bring these cases to our attention as they have been key to the successes achieved so far.

Post-Stockholm developments: As we continue our work to ensure that the improved protection of fair trial rights in Europe remains high on the agenda as the post-Stockholm strategic guidelines are agreed by the European Council this year, [the European Commission and the European Parliament have taken on board our priorities](#). The [European Commission's report](#) on the future EU justice agenda, published in March, highlighted the importance of effective implementation of the new EU laws on fair trial rights and the consolidation of existing legislation to make sure that fundamental rights are upheld and that EU Member States can trust in each other's systems, recognise each other's judicial decisions and thereby fight crime more effectively. The Parliament's [report on the mid-term review of the Stockholm Programme](#) reiterated the need for effective transposition of the existing fair trial rights directives while also emphasising the importance of continued work on fair trial rights. The Parliament has also joined us in calling on the Commission to revisit the case for establishing minimum legislative standards on pre-trial detention, expressing regret that work on this important issue remains outstanding. On 19th March, the LIBE committee held a joint parliamentary meeting with members of Member States' national parliaments to discuss the priorities for the next EU programme for justice, freedom and security, during which it again highlighted the need to implement adopted legislation on suspects' procedural rights and for reform of the EAW.

European Parliament election twitter campaign: In advance of the European Parliament elections on 22 May, we have launched a campaign to encourage MEP candidates to tweet an infographic – [available here](#) – which illustrates the four key priorities for the future of justice in Europe set out in the Stockholm's Sunset report. We have had a good response so far, with MEPs from all of the main groups showing their support for our campaign and we hope this will continue until the polls open. If you have a twitter account, please do tweet the following ready-made message and encourage your contacts to do so as well!

I support @Fairtrials goals: fair trials at the heart of #EUJustice <http://www.fairtrials.org>
pic.twitter.com/IGrXPK2sRB

European Investigation Order Directive adopted: March 2014 saw the final adoption of the agreed text of the long-negotiated [European Investigation Order \(EIO\) Directive](#), a mutual recognition tool designed to facilitate cross-border evidence gathering and to replace mutual legal assistance mechanisms within the EU. When the measure was first proposed in 2010, Fair Trials [expressed](#) concern about the lack of safeguards to protect fundamental rights, including the tool's potential use by the defence, refusal grounds for fundamental rights violations, and data protection. We are pleased that many of our concerns have been remedied in the adopted text, such that an EIO can clearly be requested by the defence, refused on principled grounds, and is subject to independent review before issuing.

However, some problems remain in the text, such as the potential for disproportionate use of the EIO, lack of safeguards around the temporary transfer of and notification to individuals subject to an EIO. For our full analysis of the adopted text, you can read our position paper [here](#).

European Commission Report on implementation of common rules on detention: The EU Commission has [criticised](#) the failure of many Member States to comply with three EU Framework Decisions (2008/909/JHA, 2008/947/JHA and 2009/829/JHA) on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention), which are intended to allow more people to await trial or serve their sentence (custodial or non-custodial) in their country of origin or habitual residence. Fair Trials has campaigned particularly for implementation of the [European Supervision Order](#) (ESO) as a response to the overuse of pre-trial detention of foreign nationals in the EU. We are pleased that the Commission has not only highlighted the importance of these laws for non-national defendants but also emphasised its commitment to using its enforcement powers, which will come into effect in December 2014, against recalcitrant Member States.

UK extradition reforms: New safeguards against injustice have been introduced into the UK's extradition arrangements with the rest of Europe by the [Anti-Social Behaviour, Crime and Policing Act 2014](#), which received Royal Assent to become an Act of Parliament on 13 March. The Act represents an important step towards much-needed reform of the European Arrest Warrant system, answering [persistent calls by Fair Trials International](#), with the introduction of new grounds for refusal on the basis of proportionality and trial-readiness in the requesting state. Disappointingly, the Act also removed the automatic right to appeal; a key existing safeguard for those facing unjust extradition. [Fair Trials fought hard to persuade members of the UK parliament to resist its inclusion](#) and we have recently made a [submission](#) to the Criminal Procedure Rules Committee in the hope that the process for obtaining permission to appeal will be structured as fairly as possible.

Case developments

- a) **Irish Supreme Court rules on Access to a Lawyer:** On 6 March 2014, the Irish Supreme Court handed down a groundbreaking decision relating to the entitlement to legal advice during pre-trial detention for interrogation. In [DPP v Gormley](#), a suspect was questioned following arrest before the arrival of his requested solicitor and made incriminating admissions. The Court found that Irish law was not compliant with international jurisprudence, so the suspect's admissions were excluded and his conviction was quashed. It is expected that existing case-law specifically providing that a suspect is not entitled to have his lawyer present during police interrogation will also be overturned in due course, a significant move in light of the fact that Ireland has not opted into the Access to a Lawyer Directive. In the joined case, [DPP v White](#), the

Supreme Court ruled that a suspect in police detention did not have the right to legal advice following a police demand for, and prior to the giving of, forensic samples. The Court found that because the test results were objective, and that the suspect was legally obliged to provide them, no real issue arose entitling him to have legal advice prior to the samples being taken. Read LEAP member Dara Robinson's analysis of the cases [here](#).

- b) **EAW requests from Spain scrutinised:** Recent cases both from the [High Court in the UK](#) and the [Court of Cassation](#) in Belgium have critically examined EAW requests from Spain in which it was alleged that the wanted individuals would be subject to incommunicado detention and secrecy of the case file, practices for which Spain has long been criticised. The Belgian court found the evidence of such practices sufficiently strong to overcome the presumption of compliance with the Convention and on this basis discharged the extradition.
- c) **Italian EAW blocked by the UK:** The UK High Court recently issued a decision in [Badre v. Court of Florence](#), discharging an individual from extradition on Article 3 grounds due to systemic deficiencies in prison conditions in Italy as evidenced by the ECtHR's pilot judgment in [Torreggiani v Italy](#). Assurances provided by Italy as to the conditions in which Mr Badre would be held were deemed by the Court to be insufficiently specific to be reliable.

[Requests for Information](#)

Member bios: As we mentioned in the LEAP update in February, we are still keen to collect up-to-date bios on all LEAP members for our revamped Networks webpage, so that we can highlight and promote the range of experts who inform our work. If you haven't already, please send 2-3 sentences on your work, your company/organisation/institution and your areas of expertise as soon as possible for inclusion on the site.

Information on EAWs refused on human rights grounds: As we continue to lobby the EU institutions for reform of the EAW, we are in need of up to date information on the operation of current fundamental rights protections in the EAW. We are therefore trying to collect a comprehensive study of cases from throughout the EU in which EAWs were not executed on human rights grounds. We would be very grateful if you could please send us information on any such cases (recent or historical) from your jurisdiction. Ideally we would like to see citations, links and case summaries, but whatever information you are able to provide would be very helpful.

Progress on Implementation of Roadmap Directives: As we mentioned in our LEAP update in February, we want to gather information on what legislative reforms have been undertaken in each EU Member State in response to the Roadmap Directives. For those of you who have not yet answered, we are keen to get an overview of what the reforms in your Member State propose to do with regard to the fundamental rights of criminal suspects. In the attached document, you will find sample questions and answers which cover the information we hope to obtain. The sample covers developments in Lithuania, with answers provided to us by LEAP Member Karolis Liutkevičius. If you are aware of the current state of reforms in your member state, please share this information with us (by email to Rebecca.shaeffer@fairtrials.net) so that we can ensure our campaigning is as focused and effective as possible.

Treatment of pre-trial detainees at the end of statutory maximum lengths of detention:

We have received an enquiry from a researcher at the Central European University in Budapest who is conducting a comparative analysis of the treatment of pre-trial detainees once statutory maximum duration of pre-trial detention has been reached, in the case of a defendant who does not have a regular abode suitable for house arrest. If you work in a jurisdiction with a statutory maximum length of PTD, please respond to Rebecca.shaeffer@fairtrials.net with the following information:

- i) What alternatives to detention and house arrest are used in such situations?
- ii) Can the absence of a regular residence justify extension of pre-trial detention past the statutory maximum?
- iii) May a homeless shelter, hostel or mobile home such as a camper van serve as an alternative to house arrest?
- iv) If an acquaintance or relative is found willing to house the defendant, is the state under any obligation to provide for the basic needs of the person?

Human stories on pre-trial detention, presumption of innocence and children: We are on the look-out for cases related to our current advocacy in Brussels. As you know, real stories from your own practices have been very successful in convincing lawmakers of the need for protective legislation. In this vein, we are currently requesting information from you on any cases you may have that feature:

- i) poor or irregular treatment of **child defendants**;
- ii) violations of the **presumption of innocence**; and
- iii) imposition of **pre-trial detention** for defendants who are later acquitted or sentenced to a non-custodial sentence.

Please note that we can anonymise sensitive cases and will work with you to ensure that any summaries or case studies we use protect your clients' interests. We can also do the leg-work of writing cases up – just drop us an email or give us a call if you have an interesting case and we can take it from there.