

## LEAP Quarterly Report May 2013

Welcome to the to the second LEAP Quarterly Report of 2013. A big thank you to everyone for the overwhelmingly positive feedback received about these reports – please continue to [let us know](#) what you think. We hope that this will continue to prove a useful and informative bulletin for you all.

### FTI and LEAP news

**Local Experts Groups:** We have now held three more Local Experts Group meetings. In February we held a meeting jointly with the Hungarian Helsinki Committee at the offices of the Open Society Institute in Budapest. In April we met with lawyers in Athens and earlier this month we partnered with the Human Rights Monitoring Institute to hold a meeting in Vilnius. These meetings continue to provide the opportunity to collate extremely valuable information about pre-trial detention from leading criminal law practitioners and academics. The communiqué from the Hungary Local Experts Group meeting has now been published in [English](#) and [Hungarian](#). Many thanks to all of you who have assisted with the organisation of these meetings and have taken the time to attend. We are looking forward to the next Local Experts Group meeting in Paris on 13 June.

**Advancing Defence Rights expert meetings:** FTI is holding a series of roundtable meetings of defence rights experts in advance of the implementation of the first two laws under the Procedural Rights Roadmap, the Directives on the right to interpretation and translation and on the right to information in criminal proceedings. Each of these meetings brings together defence practitioners from a small number of Member States to discuss how these laws can best be implemented to address the problems that lawyers encounter in their daily work. Our first meeting was held in Hungary in February (read the communiqué [here](#)) and the second meeting took place in Lithuania in May, and both were attended by a number of LEAP members. We shall be using the information gathered at these meetings to develop in-country training programmes for legal practitioners across the EU, aimed at raising awareness of the new laws and encouraging practitioners to use them in their work. If you would be willing to help with a training course in your country then please [let us know](#).

**Updating FTI's map of EU countries' fair trials standards:** In October 2012, we launched a new [interactive map](#) which provides an overview of the state of fair trial rights in every Member State, including: (i) judgments of the European Court of Human Rights; (ii) criticisms by international organisations, local press and NGOs; and (iii) details of FTI's own cases. We are in the process of updating the map and would like your help with this. Please take a look at the information on the map for your country, and if there is anything that you think should be added then [let us know](#). We would also be delighted to include links to any reports that you have produced or important cases that you have been involved in.

**LEAP Annual Conference 2013:** This year's LEAP Annual Conference will be held in London in September. We will be in touch soon with further information and hope that as many of you as possible will be able to attend.

**Academy of European Law training seminars:** The Academy of European Law is running two series of training seminars during 2013 and 2014, one on the Charter of Fundamental Rights of the EU and the other on improving conditions related to detention. FTI is a partner organisation for these

projects and will be delivering modules at several of the seminars. The first of these will be run by FTI Law Reform Officer Alex Tinsley in Edinburgh in June. If you are interested in attending, more information on the Charter of Fundamental Rights seminars is available [here](#) and on the detention seminars [here](#).

### Recent developments in EU criminal justice

**Joint NGO action on draft Directive on access to a lawyer:** Trilogues have been ongoing between the European Parliament, Council and Commission as the parties try to reach an agreement on the proposed Directive on access to a lawyer and to communicate on arrest. In April, FTI and five other NGOs published a joint statement with the aim of ensuring that the final law provides effective protection of fundamental rights in line with the European Convention on Human Rights (**ECHR**) and the case-law of the Strasbourg Court. The statement raised a number of concerns about the draft Directive, including in relation to remedies, confidentiality of communication between suspects and their lawyers and exceptions for minor offences. You can read the statement [here](#). We are pleased that since the statement was published, progress has been made on a number of points and we will keep you updated as this important law is finalised.

**European Parliament legislative initiative report on the European Arrest Warrant:** The LIBE Committee of the European Parliament has announced that it is to begin work on a legislative initiative report looking at reform of the European Arrest Warrant (EAW). FTI is delighted that the European Parliament is taking this action, which follows [a report that we published in 2011](#) where we called on MEPs to use their power to publish own initiative reports to tackle the flaws in the EAW system. We hope to work closely with the Rapporteur – Baroness Sarah Ludford - throughout the process and will share further information with you once it is available.

**UK opt-out of EU police and criminal justice laws:** We wrote in the [last LEAP Quarterly Report](#) about the decision that the UK must make by 2014 on whether to continue taking part in EU police and criminal justice laws passed before the Lisbon Treaty came into force, including the EAW. The UK House of Lords has now published its [report](#) following an inquiry into the issue in which FTI gave [evidence](#). The report recognises that the EAW is the most important measure subject to the opt-out decision and highlights the serious consequences that extradition can have, including long periods of pre-trial detention in poor prison conditions. It recommends that the UK Government work with other Member States to improve the operation of the EAW system ahead of 2014, something that FTI has long been calling for.

**New UN Guidelines on the right to liberty:** The United Nations Human Rights Committee (**HRC**) has issued new guidance on Article 9 of the International Covenant on Civil and Political Rights, which protects the right to liberty and security of person. The guidelines indicate that arrested persons should be brought before a judge within 48 hours and also re-affirm the principle that detainees must be tried as quickly as possible, to the extent consistent with their rights of defence. The guidelines are available [here](#). Unfortunately, despite these internationally-recognised standards, many of our clients spend months and years in detention awaiting trial. We have led calls for EU action to tackle this issue and will continue to put pressure on the Commission to take its work on pre-trial detention forward.

**European Criminal Bar Association (ECBA) publishes statement of concern about the treatment of lawyers in Turkey:** We [wrote last year](#) about LEAP Member Hans Gaasbeeks' work observing proceedings in Turkey which raised serious concerns about the treatment and detention of lawyers accused of working for the leader of the Kurdistan Workers' Party. Reports of criminal proceedings and coercive measures against defence lawyers in Turkey, including the arrest and detention of lawyers defending suspects accused of terrorist offences, have become increasingly widespread and the ECBA has now issued a statement expressing its concern and urging Turkey to observe the [UN Basic Principles on the Role of Lawyers](#). You can read the statement [here](#).

### [Request for cases](#)

Thank you to those of you who have been in contact about recent cases or developments in EU law. We remain keen to hear about ongoing cases in your jurisdictions. These cases help us to understand key issues in criminal practice in the EU, and to address them through policy work and legal interventions. We are, in particular, interested in hearing about cases in the following areas:

- **The European Arrest Warrant (EAW):** Cases in which: (i) execution of an EAW has been refused, but the EAW is not withdrawn, leaving the individual facing a risk of arrest in other Member States; and (ii) cases in which the EAW is issued for a very minor offence and where extradition will have a disproportionate impact on the individual.
- **Interpol:** FTI would like to speak to anyone with a client who has been subject to an Interpol red notice.
- **Access to a lawyer:** Cases where access to a lawyer has been denied or restricted, particularly during police questioning and in pre-trial detention.
- **Vulnerable suspects:** Cases in which the suspect or accused is particularly vulnerable, for example due to mental health or age.
- **Legal aid:** Cases where problems with access to publicly-funded legal assistance have meant that suspects cannot effectively exercise their rights.
- **Presumption of innocence:** Cases where a suspect's right to a presumption of innocence has not been respected, for example because a decision to remain silent has been used against them.

### [Recent cases in domestic courts](#)

**Lithuania v. Liam Campbell [2013] NIQB 19:** Lithuania issued an EAW against Mr Campbell in relation to terrorist offences. The defendant argued that extradition would breach his human rights, relying on the decision of the ECtHR in [Savenkovas v Lithuania](#), in which Lithuania was found to be in violation of Article 3 ECHR due to severe overcrowding and unsanitary conditions in the Lithuanian remand prison where Mr Campbell was likely to be detained. The High Court of Northern Ireland held that the defendant had satisfied the test set down in [Soering v UK](#), namely that, absent any specific assurance by the Lithuanian authorities to the contrary, there were substantial grounds for believing that the defendant, if extradited to Lithuania, would face a real risk of exposure to inhuman and degrading treatment or punishment in violation of Article 3 ECHR. The court therefore refused to execute the warrant on human rights grounds under a power granted to UK courts by domestic legislation. The decision differed from the earlier case of [Janovic v Prosecutor's General's Office Lithuania](#), in which a UK court held that, although Lithuanian prison conditions were poor, they did not breach Article 3. The full judgment is available [here](#).

If there are significant appeals in the higher courts in your Member State concerning the European Arrest Warrant, access to a lawyer or pre-trial detention please [let us know](#).

### Recent cases filed or decided at the European courts

**Case C-399/11 Stefano Melloni (CJEU):** We wrote in [November's LEAP Quarterly Report](#) about the [Opinion of Advocate-General Bot](#) in the case of Melloni. The Court issued its judgment in February, agreeing with the Advocate-General that because the facts of the case did not fall within the specific amendments to the EAW Framework Decision in relation to in absentia convictions agreed by Member States in 2009, Spain could not make extradition conditional on Mr Melloni's conviction being open to review because this would compromise the primacy and effectiveness of the EU law. We are concerned that this decision, if read expansively, may mean that other domestic laws providing extra safeguards for human rights beyond those set out in EU legislation would not be upheld. This could, for example, affect Germany which applies a proportionality test to prevent extradition for minor crimes. The full judgment is available [here](#).

**Aswat v the United Kingdom (ECtHR):** The applicant challenged his extradition from the UK to the US, where he is accused of various terrorism offences, on the basis that this would violate his rights under Article 3 ECHR. In April 2012, the ECtHR held that conditions in ADX Florence (the super-max prison where the applicant would be held if convicted) did not amount to a breach of Article 3 and that three other applicants in the same case should be extradited (see [Babar Ahmad and others v United Kingdom](#)). However, the applicant suffers from severe mental health problems including paranoid schizophrenia which had resulted in his transfer from prison to a secure psychiatric hospital, and the Court adjourned his case pending further submissions. The applicant argued that conditions in ADX Florence were likely to have a much greater impact on him on account of his mental illness. The court agreed, distinguishing this case solely on the basis of the severity of the applicant's mental condition, and holding that there was a real risk that his extradition to a different and potentially more hostile prison environment in the United States would result in a significant deterioration in his mental and physical health and that it would therefore breach Article 3 ECHR. The court's judgment is available [here](#).