Implementation – what's the problem?

Following the deadline for implementation for the first two Roadmap Directives, LEAP met to survey the situation and discuss what role LEAP could play, in partnership with local actors, in driving the effective implementation of the Roadmap so far. LEAP identified four key areas where problems commonly arise, where it would focus its efforts:

a) The quality of interpretation in criminal proceedings

LEAP has consistently expressed concern about interpretation at police stations leading to possible misunderstandings; the absence of audio recording which leaves courts unable to ascertain exactly what took place during questioning; the independence of some interpreters vis-à-vis police; and the lack of interpretation provided for meetings between lawyer and client.

b) Letters of rights

LEAP has frequently drawn attention to the convoluted, confusing and misleading ways in which suspects are notified of their procedural rights, leaving them unable to exercise them. Written notifications drafted in a complex manner and bureaucratic tone, based entirely on extracts from legal texts, render it unclear and inaccessible to the individual. The requirement in the Right to Information Directive for a 'Letter of Rights' drafted in simple and accessible language could be of great benefit, but in some Member States the new letters offer no improvement on the old.

Beschuldigtenvernehmung Mir warde eröffnet, welche Tatjani mir zur Last geliegt wird/warden. Bizhwanden zursche kryan har artisterne inserner Widerstand gegen Polizeivollizugsbeamte, versuchte gef. K\(\tilde{L}\)representation with the state of the

"This information usually contains very formal language, it's not understood properly, and before the lawyer arrives it makes execution of the right impossible."

A lawyer from LEAP on the Letters of Rights.

c) Access to the case file

There is great interest surrounding Article 7 of the Right to Information Directive, which grants the right for the defence to access the case file. Practitioners report problems at three stages: (a) the lack of access to the police file at the point of interrogation; (b) the restriction of access to the file during pretrial proceedings (often making it more difficult to challenge detention); and (c) the manner in which access is provided and its impact upon trial preparation. A survey published by LEAP in 2015 confirmed that these issues mostly remained despite the adoption of implementing laws.

Spotlight on Estonia - The law specifically implementing the Right to Information Directive grants access to documents essential to the assessment of the lawfulness of detention, but allows the prosecutor to restrict access to these documents. Estonian lawyers consider this contrary to the Rightto Information Directive, under Article 7(1) of which such documents must be provided, without the possibility of derogation.

d) Remedies for procedural rights violations

LEAP has highlighted that the two first Roadmap Directives leave open questions about remedies: the Interpretation & Translation Directive is silent on the point, while Article 8 of the Right to Information Directive envisages a 'right to challenge' possible violations, without offering more information. The effectiveness of the Roadmap Directives thus depends on national systems of remedies.

Whichever substantive rules are adopted in implementation of the Roadmap Directives, there is general agreement among LEAP members that it is important for implementation work to ensure sufficient focus is placed upon the enforcement of those rules.