

Documentation



THE IMPACT OF DETENTION ON PRISONERS



316DT69 Madrid, 27-28 October 2016



**Co-funded by the Criminal Justice
Programme of the European Union 2014-2020**

Objective

This third seminar in a series of five co-funded by the European Commission on issues related to detention will focus on the impact of detention on prisoners. It will also examine issues related to juvenile justice and detention, especially Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, as well as the proper use of Framework Decision 2008/909/JHA on the transfer of prisoners.

Key topics

- Impact assessment of detention on prisoners: comparison of practices in different Member States
- Focus on juvenile justice in relation to detention and the new Directive (EU) 2016/800 on the rights of children suspected or accused in criminal proceedings
- The application and correct use of Framework Decision 2008/909/JHA on the transfer of prisoners

Who should attend?

Judges, prosecutors, lawyers in private practice, ministry officials and officials from prison administrations, the probation system and prison.

For further information

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Speakers

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Tom Daems, Associate Professor of Criminology, Leuven Institute of Criminology (LINC), Faculty of Law, University of Leuven

Dr Wendy De Bondt, Professor of Criminal Law, Institute for International Research on Criminal Policy (IRCP), Ghent University

Ioan Durnescu, Professor, Faculty of Sociology and Social Work, University of Bucharest; Confederation of European Probation (CEP) Board Member

Ramin Farinpour, Course Director, European Criminal Law Section, ERA, Trier

Juan Francisco Franco Yagüe, Coordinator, Department for Children in Social Conflict, Agency for the Reeducation and Reintegration of Juvenile Offenders, Madrid

Michele Miravalle, Researcher, Department of Law, University of Turin; Member of the European Prison Observatory

Carmen Monfort, Prosecutor, *Audiencia Nacional* (National Court), Madrid

Jaime Moreno Verdejo, Prosecutor of the Supreme Court, Chief Prosecutor of Prison Surveillance, Madrid

Mario Muñoz Anguita, Project Manager, International Juvenile Justice Observatory (IJJO), Murcia

Alessandro Padovani, Director, Instituto Don Calabria, Verona

Florentino-Gregorio Ruiz Yamuza, Senior Judge, Appeal Court of Huelva; Member of the Spanish Judicial Network for International Cooperation in Criminal Matters

Barbara Stańdo-Kawecka, Professor, Faculty of Law and Administration, Jagiellonian University, Krakow

Dr Sanne Struijk, Associate Professor of Criminal Law, Erasmus School of Law, Erasmus University Rotterdam; Judge, Criminal Court of Rotterdam

Antonio Zárate Conde, Director, Centre for Legal Studies (CEJ), Madrid



THE IMPACT OF DETENTION ON PRISONERS IMPACT ASSESSMENT OF DETENTION, JUVENILE JUSTICE IN RELATION TO DETENTION, THE TRANSFER OF PRISONERS

Madrid, 27-28 October 2016
Centro de Estudios Jurídicos
Calle Juan del Rosal, 2
Madrid

Organiser:
ERA (Ramin Farinpour) in cooperation with the CEJ (Ministry of Justice, Spain), Spanish Ombudsman, IJJO, Council of Europe and the European Organisation of Prison and Correctional Services (EuroPris)

Languages: English and Spanish (simultaneous interpretation)

Event number: 316DT69





Thursday, 27 October 2016

- 08:30 Arrival and registration of participants
- 09:00 **Welcome and introduction**
Antonio Zárate Conde, Ramin Farinpour
- I. THE IMPACT OF DETENTION ON PRISONERS**
Chair: Ramin Farinpour
- 09:10 **Detention and its effects on prisoners: an overview of the typologies and status quo in various Member States**
Michele Miravalle
- 10:00 **The impact and effects of detention and detention regimes on prisoners: what role for Europe?**
Tom Daems
- 10:30 Discussion
- 11:00 Coffee break
- 11:30 **From young adult to repeat offenders: looking at the Dutch prison system and the impact of detention on prisoners from an academic and judicial point of view**
Sanne Struijk
- 12:00 **The impact of detention from the perspective of a National Preventive Mechanism (NPM)**
Manuel Barros
- 12:30 Discussion
- 13:00 Lunch
- II. JUVENILE JUSTICE AND DETENTION**
Chair: Ioan Durnescu
- 14:00 **The "European Rules for Juvenile Offenders Subject to Sanctions or Measures" and trends in deprivation of liberty**
Barbara Stańdo-Kawecka

- 14:30 **Directive (EU) 2016/800 on the rights of children suspected or accused in criminal proceedings and its implications for juvenile detention**
Mario Muñoz Anguita
- 15:00 Discussion
- 15:30 Coffee break
- 16:00 **Alternatives to detention for juvenile offenders: an overview of good practices in Europe**
Alessandro Padovani
- 16:30 **Re-educating and reintegrating juvenile offenders: community sentences and working with the judiciary to ensure their effective implementation**
Juan Francisco Franco Yagüe
- 17:00 Discussion
- 17:30 End of first day
- 19:30 Dinner

Friday, 28 October 2016

- III. THE TRANSFER OF PRISONERS: COUNCIL FRAMEWORK DECISION 2008/909/JHA**
Chair: Ramin Farinpour
- 09:00 **Council Framework Decisions 2008/909/JHA**
- State of play in relation to implementation
 - Overcoming legal and practical problems
 - The handbook to assist with its proper implementation and use
- Wendy De Bondt*
- 09:45 **STEPS 2 Resettlement Programme and its support for the effective delivery of FD 909**
- Offenders handbook
 - Victims' liaison
 - Data transfer
 - Case study of transfer between Spain and Romania
- Ioan Durnescu, Florentino-Gregorio Ruiz Yamuza*
- 10:30 Discussion
- 11:00 Coffee break
- 11:30 **The judicial application of FD 909 in practice: lessons learned from enforcing sentences and dealing with transfer requests**
Carmen Monfort, Jaime Moreno Verdejo
- 12:00 Discussion
- 12:15 **Simultaneous workshops**
- The correct use and application of Framework Decision 909**
Ioan Durnescu, Florentino-Gregorio Ruiz Yamuza; Wendy De Bondt
- Protecting rights, restoring respect and strengthening relationships: enhancing restorative justice with children and young people**
Mario Muñoz Anguita
- Reducing the need for juvenile detention and ensuring better protection whilst in it**
Alessandro Padovani
- 13:30 **Workshop reports and final discussion**
- 14:00 End of the seminar and lunch

For programme updates: www.era.int
Programme may be subject to amendment.

Detention and its effects on prisoners: an overview of the typologies and *status quo* in various Member States

Dr. Michele MIRAVALLE

Madrid, 27 oct. 2016

The European Prison Observatory

The European Prison Observatory (EPO) was launched in Rome in February 2013 and operates in **8 countries (France, UK, Greece, Italy, Latvia, Poland, Portugal, Spain)**. Through quantitative and qualitative analysis, **the EPO monitors and analyses the present conditions of the different national prison systems and the related systems of alternatives to detention in Europe**, comparing these conditions to the international norms and standards relevant for the protections of inmates' fundamental rights, particularly the **European Prison Rules (EPR) of the Council of Europe**

More info at www.prisonobservatory.org

PRISON CONDITIONS IN EUROPE

In describing prison conditions in Europe we tried to highlight how and to what extent the conditions in the participating countries, as conveyed by the data collected, comply with the **European Prison Rules (EPR)**.

THE TWO PRINCIPLES

- 1) the principle of **NORMALISATION** which aims to organise life in prison in order to bring it as close as possible to life outside the prison walls
- 2) the principle of **RESPONSABILISATION** which aims to give to the inmates the opportunity to have personal responsibilities in the everyday life of the prison.

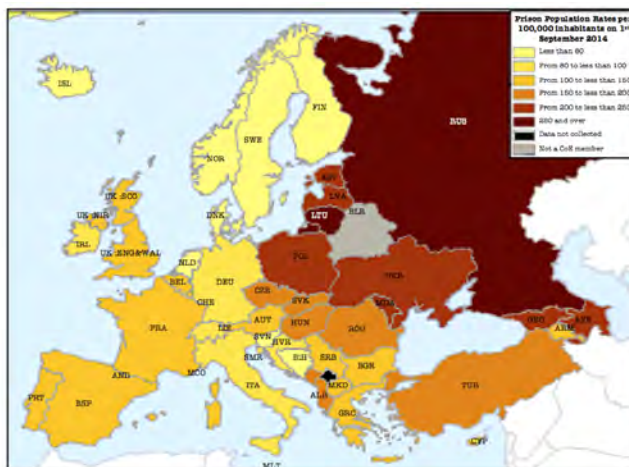


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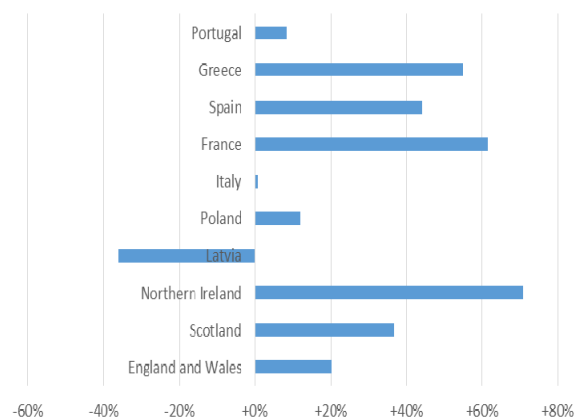
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IS MASS INCARCERATION STILL THERE

???



PRISON POPULATION CHANGE, 2000-2014 (SPACE I)



The main source for quantitative data is SPACE I

IS MASS INCARCERATION STILL THERE

???

- **1.600. 324 is the total number of inmates in Europe**
- Prison Population Rates [PPR]:
 - a) Average PPR in European countries: 136 inmates per 100,000 inhabitants
 - b) Median PPR in European countries: 124 inmates per 100,000 inhabitants
 - c) Considering Europe as a single country, there would be 195 inmates per 100,000 inhabitants. **Between 5% to 7% is the decrease of the PPR (median values) since 2013**
- **13 (out of 50) countries had prison overcrowding**

IS MASS INCARCERATION STILL THERE

???

- Overcrowding: European prisons are still full (94% of their capacities are used)
- **Mortality Rate** (average): 28 deaths per 10,000 inmates (stable)
- **Suicide Rate**: 5 suicides per 10,000 inmates (stable) - Suicides represent 19% of all deaths. **31% of the prisoners who committed suicide were in pre-trial detention (basically all during the first week of detention)**
- Amount spent per inmate/day: 99€ (average). **27 Billion Euros is the cost of the “EU prison system”**
- In 2014 there were **3 inmates per 1 custodial staff member and 14 inmates per other members of staff** (e.g. medical staff employed, teachers, psychologists, social workers). 92% of all staff employed by Prison Administrations work inside penal institutions.

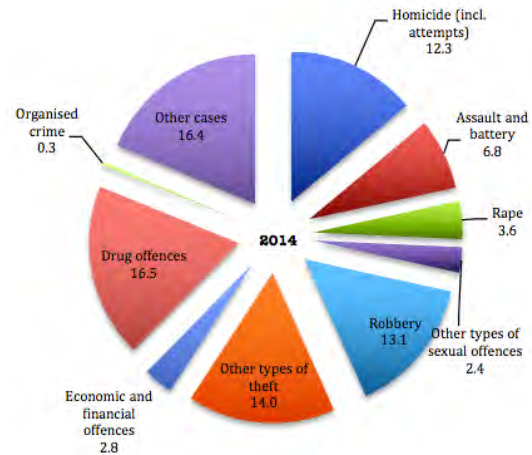
IS MASS INCARCERATION STILL THERE

???

Among prisoners serving a final sentence, the “drug offences” convicted are the most relevant group (16,5 %)

In Southern Europe they are even more than 20%

The countries that experienced the highest rates of prisoners sentenced for drug offences (more than 30 per 100,000 inhabitants) are Russia (81 per 100,000), Georgia (72), Azerbaijan (57), Estonia (45), Malta (40), Montenegro (35) and Spain



IS MASS INCARCERATION STILL THERE

???

A focus on pre-trial detention

ALTERNATIVES TO DETENTION AS AN ANSWER
???

NET WIDENING EFFECT
(What? When? Why?)

ALTERNATIVES TO DETENTION AS AN ANSWER
???

DETENTION REGIME AND CONDITION

LAW IN THE BOOKS

life in prison should approximate “as closely as possible the positive aspects of life in the community” (Rule 5)

- “the accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene” (Rule 18-1)
- “prisoners shall have ready access to sanitary facilities that are hygienic and respect privacy” (Rule 19-3); “adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily” (Rule 19 -4)
- “the regime provided for all prisoners shall allow all prisoners to spend as many hours a day outside their cells as necessary for an adequate level of human and social interaction” (Rule 25-2). “prisoners should spend out of their cells for at least eight hours a day”.

LAW IN ACTION

-The cleanliness of cells and sanitary facilities varies across different prisons, but commonly many facilities violate the hygiene and health standards, especially the older establishments. In some newer prisons, cells are equipped with a shower and toilet that afford privacy, but in other cases there is generally only a sink separated from the rest of the cell only by a curtain or a low wall

- prisons generally operate under a closed door regime. In this context, two countries, Greece and Spain, distinguish themselves by allowing inmates to spend between 6 to 11 hours outside cells (even apart from activities), walking in the wing, congregating for social interactions or exercising in the open air. In Greece, inmates are allowed to congregate outside cells 10 and a half to 11 hours per day (four and a half hours or five hours in the morning, six hours in the afternoon) In Italy in response to the ECHR Torreggiani judgment, is trying to allow all medium security inmates (the vast majority) to spend at least eight hours per day outside their cells.

THE TORREGGIANI CASE

How a ECHR sentence can change the whole prison system

HEALTH

LAW IN THE BOOKS

Despite EPR rules and national laws setting clear guidelines on this matter, acutely contagious sick prisoners are not always isolated, while risks related to solitary confinement are often overlooked (the same is true for mental illness treatment and suicide prevention, as the high number of suicides indicate). Due to the shortage of resources, meeting the needs of all the prisoners suffering from drug addiction can be problematic, despite the provisions of EPR 42.3. Harm reduction policies are not implemented, with the sole exception of Spain.

LAW IN ACTION

- Only in France, Italy and the UK, are the national Ministries of Health responsible for delivery in prison. Medical, surgical and psychiatric services in prison are scarce in all the countries involved. A permanent medical practitioner is not always present in every establishment, and even when one is, demand often exceeds capacity to deliver care.

THE EUROPEAN OBSERVATORY RACCOMANDATIONS

1. The development of a representative democracy inside prisons in England and Wales has been beneficial for prisoners, staff and the wider society. The development of a constructive dialogue helps to improve staff-prisoner relationships; it is transformative for prisoners and leads to a general reduction in tension across the institution. Prison governors across the EU must be encouraged to commit to the development of prison councils in all establishments.
2. Across the EU, strip searches and solitary confinement should be banned. Cell searches should only be conducted in the presence of the prisoner.
3. The development of mediation and restorative practices over the use of disciplinary proceedings is almost entirely absent across the states involved in the EPO. It is recommended that the EU gather evidence on positive mediation as a restorative practice across the Union and actively communicate this research to the penal systems of the member states.
4. Grendon Prison in Buckinghamshire, England demonstrates a half century of how the effectiveness of dynamic security, and a therapeutic approach in delivering a better quality of life in prison lead to lower re-conviction rates. The EU should encourage the development of a trial and evaluation of the Grendon model in each member state.

THE EUROPEAN OBSERVATORY RECCOMANDATIONS

5. Poland has demonstrated that allowing prisoners the same democratic rights as other citizens, acts of a symbol of citizenship and continued social participation without challenging security. **The EU should promote the universal prison franchise as demonstrated in Poland to encourage the responsabilisation and normalisation of prisoners to strengthen democracy in the EU.**

6. Most prisoners come from the most disadvantaged communities in the EU and many are resident in prisons that are far away from family and friends. In these circumstances maintaining vital relationships can be difficult because visits can be very expensive for families on low incomes; it can be felt as a burden for those visiting imprisoned relatives. **Meeting the travel costs for family and friends on social security payments**, as demonstrated by the Assisted Prison Visits Scheme in England and Wales, and Scotland should be standard practice across the EU.

7. **When family members visit prisoners, the need for privacy and the possibility of intimacy are paramount.** Research on the private visiting rooms in France show them to be of benefit to relatives and friends, and to enhance family links while not compromising security. Research also indicates that tension in prison is reduced if prisoners are permitted private visits. The French Familial Visit Unities (UVF) system should be implemented in all French prisons and trialled in prisons in every EU country.



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THE EUROPEAN OBSERVATORY RECCOMANDATIONS

8. Digital technology offers the possibility of maintaining contact with family and friends even if travel is not possible. Across the EU, those who are unable to travel to visit prisoners (because of distance, illness, disability or age) would benefit from the adoption of the video visits schemes as developed by APEX and the Scottish Prison Service. The technology required is low cost and secure as demonstrated in Scotland. **The EU should promote the development of 'video visits' across the member states.**

9. There is an urgent need to bridge the **digital divide** for those who are on medium and long term prison sentences. The twenty-first century has witnessed a digital revolution and the speed of change means that prisoners can be cut off from such developments and are at a significant social disadvantage as a result. There is a need to establish a comprehensive programme of secure cyber-access across the EU as has been piloted in the French penal system. The technology exists to make such access secure and for certain sites to be blocked.

10. **Access to courses focused on learning development should be the norm across the European Union.** Evidence from Italy shows access to University education can be transformative for the individual in terms of self-reflection and personal development and, further, it can broaden employment opportunities following release.



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Thank you for your attention

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The impact and effects of detention and detention regimes on prisoners: what role for Europe?

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ERA seminar 'The impact of detention on prisoners'

Centro de Estudios Jurídicos

Madrid, 27 – 28 October 2016

Overview

- (1) Introduction: thinking about 'impact'
- (2) Positive impact, or: what 'good' to be expected?
- (3) Negative impact, or: what 'bad' to be avoided?
- (4) How does Europe deal with the impact of detention?
- (5) What is the impact of Europe on the impact of detention?

(1) Introduction: thinking about 'impact'

impact 



NOUN

- 1 The action of one object coming forcibly into contact with another.

'there was the sound of a third impact'

[mass noun] 'bullets which expand and cause devastating injury on impact'

+ More example sentences

+ Synonyms

- 2 A marked effect or influence.

'our regional measures have had a significant impact on unemployment'

+ More example sentences

+ Synonyms

(2) Positive impact

- What 'good' is to be expected from detention?
- Some historical illustrations

Rasphuis & spinhuis (Amsterdam)





COURTYARD OF THE RASPHUIS IN 1614



A TEAM OF RASPERS AT WORK



WORKROOM OF THE SPINHUIS IN 1783

Maison de force (Ghent)

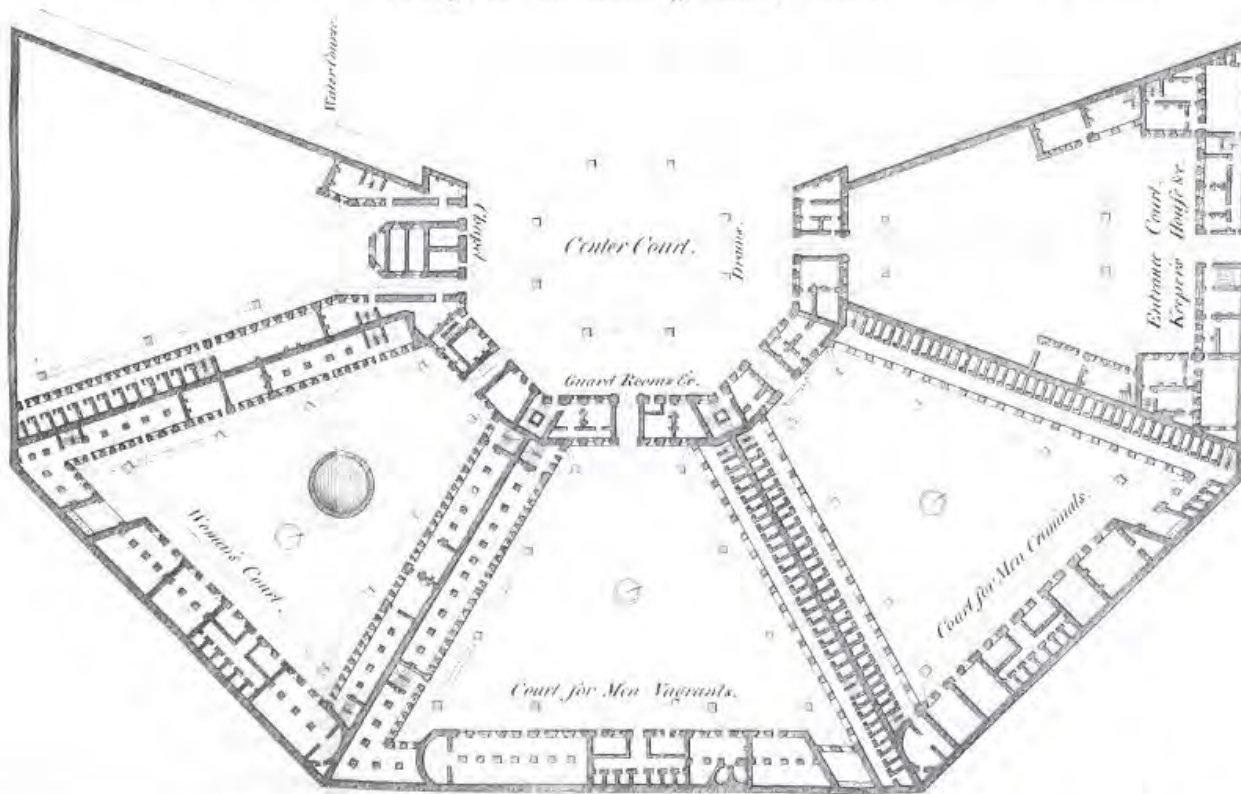
- Vilain XIII (1712 – 1777)
 - *Mémoire sur les moyens de corriger les malfaiteurs et fainéans à leur propre avantage et de les rendre utiles à l'Etat* (1775)



PLAN OF LA MAISON de FORCE at GHENT.



Part of the Elevations of Sundry Wards.



Scale in Ghent Feet: 0 10 20 30 40 50 60 70 80 90 100

* The Ghent foot is about 1/4 inch shorter than the English foot.

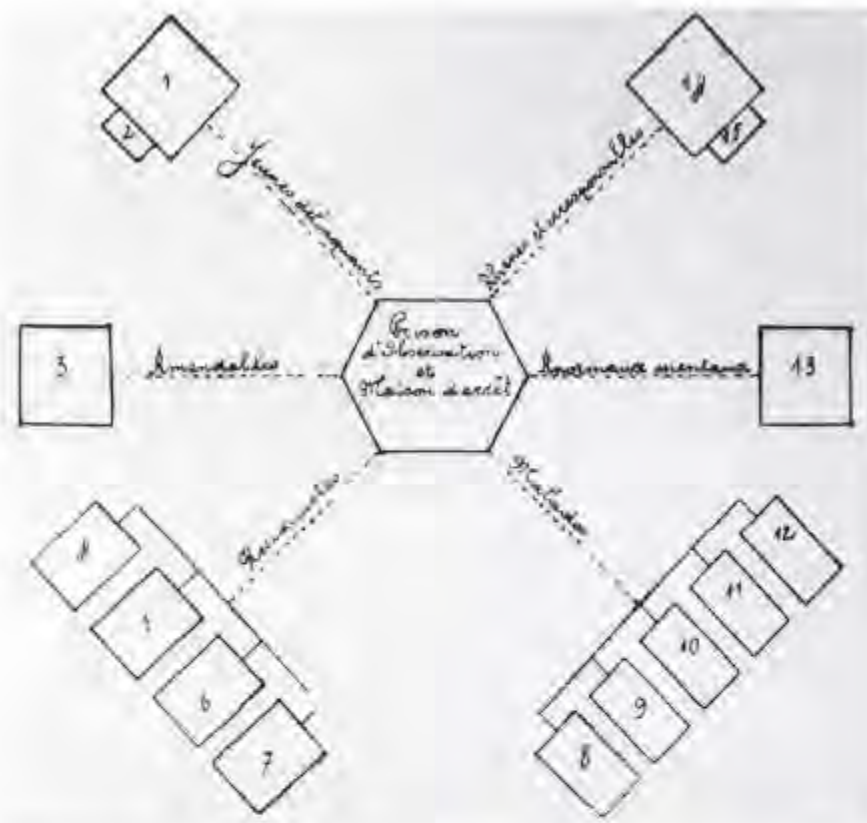
Eastern State Penitentiary - Philadelphia



Antropological laboratory in prison of Forest (Belgium)



- Vervaecks 'antropologische laboratorium' in de gevangenis van Vorst.
(Foto uit *Notice sur la prison de Forest-Bruxelles*, Brussel, 1947, p. 13)



• Schema van de penitentiaire instelling van de toekomst :

1. Liefdadigheidsinstelling (jonge delinquenten van 16 tot 21 jaar)
 2. Heropvoedingsinstelling, toegevoegd bij de vorige (jonge kwadaardige en ongedisciplineerde jongeren)
 3. Reguliere gevangenis (gewone veroordeelden en voor verbetering vatbare recidivisten)
 - ongeneeslijke recidivisten :
 4. Gevangencellen (ongedisciplineerden en zedelijk verdoenen)
 5. Industriële ateliers (streng toezicht)
 6. Landbouwkolonie (versoepeld toezicht)
 7. Gebouw voor de gedeporteerden
 - inrichtingen voor zieken :
 8. Ziekenhuis en geneeskundige penitentiaire instelling (oudere veroordeelden, gebrekkige of chronische zielen)
 9. Sanatorium en ziekenhuis voor tuberculosepatiënten
 10. Instelling voor patiënten met venerische ziekten
 11. Sanatorium voor zenuwzieken
 12. Sanatorium voor alcohol- en drugverslaafden
 13. Gevangenis-opvangtehuis (gedegeneerde, abnormalen, mentale debielen)
 14. Opvangtehuis voor criminelen (criminele krankzinnigen en onverantwoordelijke veroordeelden)
 15. Speciale sectie voor de kleptomane, zwakzinnigen en seksueel geobsedeerden
- Dit beeld van de ideale penitentiaire instelling volgens Verweeck, visualiseert moeit het idee van een netwerk waarin de beslissingsmacht in het centrum ligt. In de *prisons d'observation* (antropologische laboratoria) bestudeerde de arts in welke aangepaste gevangenis de delinquent moest worden ondergebracht. Het hoofd van de antropologische laboratoria was Verweeck zelf.
- (Illustratie uit: Louis Verweeck, "La conception anthropologique du traitement des condamnés", in *BSAB*, Brussel, 1920, p. 212)

Positive impact?

- Is prison effective (deterrence, rehabilitation, re-education, incapacitation, ...)?
 - The prison is ‘...a fiasco in terms of its own purposes’ (Mathiesen in *Prison on Trial* (1990))
- Imprisonment can *increase* crime
 - Cf. research on collateral consequences of imprisonment
- Crime control is about much more than imprisoning offenders:

‘I have been asked to consider the question ‘Does custodial sentencing work?’ It occurs to me that this is rather like asking ‘Is war an appropriate method of resolving international disputes?’ The short answer to both questions is, ‘Yes, but only in extreme situations, when all other possibilities have proved unsuccessful and when the harm which would otherwise be done is likely to be greater than the harm done by imprisonment / war’’ (Coyle 2006: 1)

(3) Negative impact

- Sociology and psychology of imprisonment: ‘pains of imprisonment’ (Sykes), ‘total institutions’ (Goffman), ‘prisonisation’ (Clemmer), ‘escape attempts’ (Cohen & Taylor), etc.
- ‘...that inevitable element of suffering and humiliation connected with the detention’ (Varga and others v Hungary, 10 March 2015, §71)

71. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with the detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Ananyev and Others*, cited above,

- From 'doing good' to 'avoiding bad':
 - The search for 'alternatives' to imprisonment
 - harm reduction
- E.g. Belgian Prison Law (2005): Avoiding / reducing the negative impact of imprisonment as guiding principle for penitentiary praxis (art. 6 Basic Prison Law)

Art. 6. § 1er. Le détenu n'est soumis à aucune limitation de ses droits politiques, civils, sociaux, économiques ou culturels autre que les limitations qui découlent de sa condamnation pénale ou de la mesure privative de liberté, celles qui sont indissociables de la privation de liberté et celles qui sont déterminées par ou en vertu de la loi.

§ 2. Durant l'exécution de la peine ou mesure privative de liberté, il convient d'empêcher les effets préjudiciables évitables de la détention.

(4) How does Europe deal with the impact of detention?



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- COPYRIGHT, PATENTS, TRADEMARKS

European Penology?

Editor(s): Tom Daems, Dirk van Zyl Smit, Sonja Snacken



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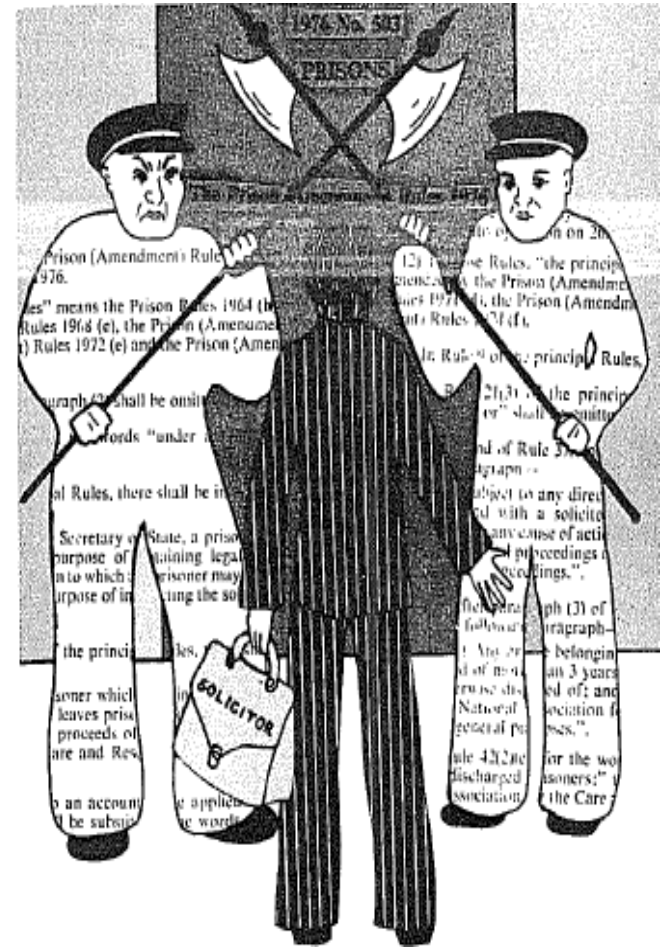
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About European Penology?

Is there something distinctive about penology in Europe? Do Europeans think about punishment and penal policy in a different way to people in other parts of the globe? If so, why is this the case and how does it work in practice? This book addresses some major and pressing issues that have been emerging in recent years in the interdisciplinary field of 'European penology', that is, a space where legal scholarship, criminology, sociology and political science meet - or should meet - in order to make sense of punishment in Europe. The chapters in *European Penology?* have been written by leading scholars in the field and focus in particular on the interaction of European academic penology and national practice with European policies as developed by the Council of Europe and, increasingly, by the European Union.

(4.1) European Court of Human Rights

- Golder vs. UK (1975) : European Court of Human Rights rejects theory of ‘inherent limitations’
 - ‘In addition and more particularly, that submission conflicts with the explicit text of Article 8 (art. 8). The restrictive formulation used at paragraph 2 (art. 8-2) ("There shall be no interference ... except such as ...") leaves no room for the concept of implied limitations’ (21/2/1975; GOLDER v. THE UNITED KINGDOM, nr. 4451/70) <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57496>
- Since then: four decades of strengthening the legal position of inmates by the European Court of Human Rights



(4.2) European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)
 - Entered into force in February 1989
 - First meeting CPT: 13 – 16 November 1989
- Preventive mission
 - As of 25 / 10 / 2016: 400 visits (237 periodic + 163 ad hoc visits)
 - 348 reports published
- CPT has developed into a major player on the European human rights scene
 - **Directly** through the on-going dialogue with member states
 - **Indirectly** through ECHR, consultation EPR (2006), OPCAT, etc



Conference
2 March 2015
Strasbourg - France
Council of Europe
Palais de l'Europe
www.cpt.coe.int/25/

**The CPT at 25:
taking stock and moving forward**

Background paper

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Council of Europe

www.coe.int

CPT European Committee for the Prevention of Torture
and Inhuman or Degrading Treatment or Punishment

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News Flash

Council of Europe anti-torture Committee holds high-level talks in [Sweden](#)

Strasbourg, 25.10.2016 - Representatives of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) have recently returned from high-level talks in Stockholm, Sweden.

The main objective of the talks, which took place on 18 October 2016, was to discuss the implementation of the CPT's long-standing recommendations aiming at significantly reducing both the scope and duration of restrictions on association and contacts with the outside world imposed on remand prisoners. The talks were also an opportunity to learn about other developments since the CPT's last visit to Sweden (2015), including as regards the regime and activities for remand prisoners and prisoners held in conditions of high security, the role of prison health-care staff in preventing ill-treatment of persons deprived of their liberty, and prisoners' visiting entitlement and access to a telephone. Discussions were also held on matters related with immigration detention and legal safeguards against ill-treatment of persons in police custody. The talks took place in an open and positive atmosphere, in the spirit of the principle of co-operation.

The CPT's representatives were George TUGUSHI, Georg HØYER and Therese RYTTER (members of the Committee) accompanied by Borys WÓDZ (Head of Division at the CPT's Secretariat). They met Morgan JOHANSSON, Minister for Justice and Migration, Anders PERKLEV, Prosecutor General, Nils ÖBERG, Director General of the Prison and Probation Service, and several other senior officials from the above-mentioned entities.

(4.3) Committee of Ministers and Commissioner for Human Rights

- Recommendations, see eg:
 - R 99 (22) concerning prison overcrowding and prison population inflation <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=538633&SecMode=1&DocId=412108&Usage=2>
 - Rec 2006 (2) on the European Prison Rules <https://wcd.coe.int/ViewDoc.jsp?id=955747>

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Commissioner for Human Rights

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Russia: Commissioner cancels visit to the country because of unacceptable restrictions imposed to his programme

STRASBOURG | 11/10/2016

In recent months, I have been discussing with the Russian authorities my intention to visit the...

CALENDAR

4/11 - CM Chairmanship Conference on Children's Rights in the Migration Crisis and in the Digital Environment (Tallinn)

14/11 - 10th anniversary of World Jewish Congress' Jewish Diplomatic Corps (Strasbourg)

17/11 - European Governmental LGBTI Focal Point Network Roundtable (Strasbourg)

17/11 - Exchange of views with CoE Gender Equality Commission (Strasbourg)

Previous news

(4.4) EU

- ‘If people are detained in conditions bad enough to be considered degrading punishment, what judicial authority would authorise the transfer of a detainee to a place where he or she would face a substantial risk of being ill-treated? What does this mean for EU rules on prisoner transfers, due to be implemented by the end of 2011? (...) For me it is therefore of crucial importance to improve prison conditions in Europe. Spreading alternatives to imprisonment and better prison management is one step that we can take in the near future. Of course prison conditions are first of all the responsibility of our 27 Member States, however, I will put pressure on all of them to live up to their responsibilities and I will publish a policy paper on prison conditions in Europe within the next 18 months’

(Viviane Reding The Future of European Criminal Justice under the Lisbon Treaty (Speech at European Law Academy, 12 March 2010))

Without mutual confidence in the area of detention, European Union mutual recognition instruments that have a bearing on detention will not work properly, because a Member State might be reluctant to recognise and enforce the decision taken by another Member State's authorities. It could be difficult to develop closer judicial cooperation between Member States unless further efforts are made to improve detention conditions and to promote alternatives to custody.

(4.5) Illustration: Europe at work in tackling ‘negative impact’ of detention



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 36/16

Luxembourg, 5 April 2016

Judgment in Joined Cases C-404/15 and C-659/15 PPU
Pál Aranyosi and Robert Căldărău

The execution of a European arrest warrant must be deferred if there is a real risk of inhuman or degrading treatment because of the conditions of detention of the person concerned in the Member State where the warrant was issued

If the existence of that risk cannot be discounted within a reasonable period, the authority responsible for the execution of the warrant must decide whether the surrender procedure should be brought to an end

In Case C-404/15, a Hungarian investigating magistrate issued two European arrest warrants with respect to Mr Pál Aranyosi, a Hungarian national, so that a criminal prosecution could be brought for two offences of forced entry and theft, allegedly committed by Mr Aranyosi in Hungary.

In Case C-659/15 PPU, a Romanian court issued a European arrest warrant with respect to Mr Robert Căldărău to secure the enforcement in Romania of a prison sentence of one year and eight months imposed for driving without a driving licence.


The two men having been located in Germany, it is the task of the German authorities to examine the warrants.

The Hanseatisches Oberlandesgericht in Bremen (Higher Regional Court of Bremen, Germany), which has to decide whether those warrants should be executed, found that the detention conditions to which Mr Aranyosi and Mr Căldărău might be subject in the Hungarian and Romanian prisons respectively were contrary to fundamental rights, in particular the provision of the Charter of Fundamental Rights of the European Union prohibiting inhuman or degrading treatment or punishment. In judgments of 10 June 2014 and 10 March 2015 the European Court of Human Rights held that Romania and Hungary had infringed fundamental rights due to the prison overcrowding which is characteristic of their prisons.¹

(5) What is the impact of Europe on the impact of detention?

- In many ways, success story
- Europe and the world
 - E.g. European inspiration to Optional Protocol to UN Convention Against Torture (OPCAT)
 - E.g. Europe and world-wide fight against capital punishment
- Rights of prisoners, prison policy

Workshop + book (Palgrave Macmillan, 2017)

KU LEUVEN 

Workshop 10-11 December 2015

WORKSHOP 'EUROPE IN PRISONS'

■■■

European prison systems and the use of imprisonment as a punishment have been given a great deal of attention in recent years. The study of imprisonment in Europe usually takes a more or less comparative approach, that is, it aims to document and analyze similarities and differences in terms of law, policy, penal rationalities, prison conditions, and so on. Often a country-specific approach is being applied whereby (native) authors with a great deal of expertise about their respective prison system report and reflect on the key characteristics and developments and, if possible, on how this national system fits within a broader penal system and relates to wider developments in society. One could call this a 'prisons in Europe'-approach.

In this workshop we adopt a somewhat different approach, that is, a 'Europe in prisons'-perspective. Such a perspective shifts scholarly attention to a somewhat different set of research questions which aims to explore the multiple ways in which Europe penetrates local prisons systems, e.g.: What has been the impact – if any – of major European institutions (in particular, the European Court of Human Rights and the European anti-torture Committee) on prison policy-making and daily life in prisons throughout Europe? How have ideas been transferred from key judicial and policy-making institutions and expert networks based in Strasbourg and Brussels into local prison systems? How do European tendencies influence and impact upon prison systems in third states (either candidate states or states at the frontiers of Europe)? To what extent are the European views on imprisonment 'exported' to other (inter- and supranational) contexts? What theoretical and conceptual tools can be used and developed to guide and promote empirical research? How can insights and research from political science and European studies (such as – but not limited to – the literature on policy transfer, Europeanisation and cosmopolitanisation) be made fruitful to advance a European penological research agenda on the growing role – and potential or actual impact – of Europe on penal theory and practice in member states?

This workshop forms part of a two-year research project '*Degradation, civilization and denial: a European and comparative perspective on punishment*' which is funded by the Research Council of KU Leuven. This project aims inter alia to explore what kind of responses state authorities formulate to the implementation of judgments of the European Court of Human Rights and recommendations of the CPT in relation to matters of penal policy and how such responses vary across European jurisdictions.

Organisation: research line 'Punishment and Control', LINC, KU Leuven

PROGRAMME

Thursday 10 December 2015

Session 1 (14.00 – 15.30h)

Introduction to the workshop: Europe in prisons – an agenda for research

Tom Daems (University of Leuven) & Luc Robert (NICC)

Monitoring prisons: the increasingly complex relationship between international and domestic frameworks

Christine Bicknell (University of Bristol) & Malcolm Evans (University of Bristol)

Domestic implementation of ECtHR judgments on prison conditions in Europe

Dia Anagnostou (ELIAMEP) & Dimitris Skleparis (ELIAMEP)

Session 2 (15.45 – 17.15h) (Spain and Norway)

Is there a gap between European prison policies and Spanish prison practices?

Josep Cid (Universitat Autònoma Barcelona) & Ariadna Andreu (Universitat Autònoma Barcelona)

Best in class? Norwegian prisons and the pragmatic production of legitimacy

Thomas Hom (University of Oslo) & Thomas Ugelvik (University of Tromsø)

Friday 11 December 2015

Session 3 (9.30 – 11h) (Belgium and Poland)

Europe in Belgian prisons

Tom Daems (University of Leuven) and Luc Robert (NICC)

Lifers and long-term prisoners – challenge to the Polish prison system?

Maria Nielaczna (Warsaw University)

Session 4 (11.15 – 12.30h)

Howard travels. A prison tour across Europe

Tom Vander Beken (Ghent University)

Comparative and concluding observations

Tom Daems (University of Leuven) & Jonas Vischers (University of Leuven)

Impact, yes... but also: Europe is contested

Brussels says we CAN'T send back Eastern European criminals..because of their HUMAN RIGHTS

MEDDLING European judges have today told Britain we CAN'T automatically send back Eastern European criminals...because it could breach their HUMAN RIGHTS.

By LAURA MOWAT

PUBLISHED: 00:01, Tue, Apr 5, 2016 | UPDATED: 21:56, Tue, Apr 5, 2016



Criminals may be able to stay in Britain following the changes

Barry Brussels bureaucrats have issued a choking diktat warning Western European nations not to send criminals back to their home countries if there is a risk of cruel treatment.

Their decision means that criminals from Eastern European nations including Hungary and Romania could effectively have carte blanche to stay in Britain, where they must either be locked up at the taxpayer's expense or let free to potentially go on crime sprees.

Tories plan to withdraw UK from European convention on human rights

Chris Grayling says Conservative government would withdraw if parliament failed to secure right to veto Strasbourg court rulings

[Read the full Tory strategy paper on human rights legislation](#)

Nicholas Watt and Owen Bowcott
The Guardian, Friday 3 October 2014 10.39 BST



The European court of human rights in Strasbourg, France. The Tories want the UK parliament to have the right to override politically unacceptable rulings. Photograph: Rex Features

A future Conservative government would be prepared to withdraw from the European convention on human rights if a series of changes to it were rejected, the justice secretary Chris Grayling has said.

Non-implementation of the Court's judgments: our shared responsibility

DE EN FR IT RU

Human Rights Commissioner Nils Muižnieks publishes his latest Human rights Comment

COMMISSIONER OF HUMAN RIGHTS | STRASBOURG | 23 AUGUST 2016



"In December last year, the Council of Europe's Steering Committee on Human Rights (CDDH) published a report on the longer-term future of the system of the European Convention on Human Rights ("the Convention"). There were two challenges which particularly struck me: firstly, prolonged non-implementation of a number of judgments of the European Court of Human Rights and secondly, direct attacks on the Court's authority.

Case-study: CPT & Belgium

doi:10.1093/bjc/azv133

BRIT. J. CRIMINOL.

SLAVES AND STATUES: TORTURE PREVENTION IN CONTEMPORARY EUROPE

TOM DAEMS*

International monitoring bodies such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) function on the basis of the assumption that member States support their activities and share the same objective, that is, to eradicate all forms of torture and ill-treatment in closed institutions that are under state control. In practice, the CPT submits reports to the member States it has visited and initiates a dialogue with States on how to improve the situation in light of its findings and recommendations. But why, then, are findings sometimes contested and recommendations neglected? Why is there not more compliance? In this article, we will explore a number of strategies that state authorities deploy when they deal with information that is felt to be annoying, troubling or threatening. The article draws on a study of the published interactions between the CPT and Belgium covering a period of almost two decades (1993–2012).

Keywords: comparative penology, human rights, punishment, Council of Europe

Introduction

Europeans want to have it both ways, so Salim, the East African trader in *A Bend in the River* suggests: ‘The Europeans wanted gold and slaves, like everybody else; but at the same time, they wanted statues put up to themselves as people who had done good things for the slaves. Being an intelligent and energetic people, and at the peak of their powers, they could express both sides of their civilization; and they got both the

CPT complains...

15. The CPT also regrets to have to record that a considerable number of the countries visited over the last twelve months were found to have failed to implement recommendations on key issues made by the Committee after earlier visits. As the CPT's President recently emphasised before the Parliamentary Assembly, the Committee does not exist to simply carry out visits and maintain cordial relations with States; its purpose is to bring about necessary change with a view to strengthening protection against ill-treatment. Only if the CPT's dialogue with a State leads to the achievement of that purpose can one speak of effective cooperation.

And again...

16. As has been stressed before, a country's cooperation with the CPT cannot be described as effective in the absence of *action to improve the situation in the light of the Committee's recommendations*. Over the years, there has been no shortage of "success stories". However, it is also the case that the failure of States to implement recommendations repeatedly made by the CPT on certain issues remains a constant refrain of the Committee's reports. Few countries visited over the last twelve months have escaped this criticism.

And again...

Activities during the period 1 August 2008 to 31 July 2009

41. The CPT is also obliged to reiterate that a country's co-operation with the Committee cannot be described as satisfactory in the absence of action to strengthen the protection of persons deprived of their liberty from ill-treatment. Indeed, the *raison d'être* of the system established by the ECPT is to bring about necessary change in the light of the Committee's findings. Regrettably, many of the countries visited over the last twelve months were found to have failed to implement recommendations on key issues repeatedly made by the CPT after previous visits.

And also (Slovak Republic)...

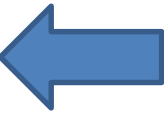
6. The CPT has repeatedly stressed that the principle of co-operation as set out in Article 3 of the Convention is not limited to facilitating the work of visiting delegations, but also requires that recommendations made by the Committee are effectively implemented in practice.

In this respect, the Committee notes with concern that several of its long-standing recommendations remain unimplemented.

Concerning the police, hardly any progress has been made as regards the legal framework and the practical operation of fundamental safeguards against ill-treatment of persons deprived of their liberty by the police, and the practice of handcuffing detained persons to wall fixtures or similar objects in police establishments still persists.

In the prison field, certain improvements have been introduced by the amendments to the Law on the execution of prison sentences and the Law on the execution of remand detention, and efforts have been made to improve the situation of certain individual life-sentenced prisoners. However, hardly any progress has been made in respect of several key issues, such as the general approach towards prisoners sentenced to life-imprisonment, the regime of activities provided to life-sentenced prisoners, remand prisoners and inmates placed in the Leopoldov Prison high-security department, and the holding of prisoners with intellectual disabilities and/or showing clear signs of serious mental disorders in that department.

The CPT urges the Slovak authorities to take resolute steps to improve the situation in the light of the recommendations made in the present report, in accordance with the principle of co-operation which lies at the heart of the Convention.

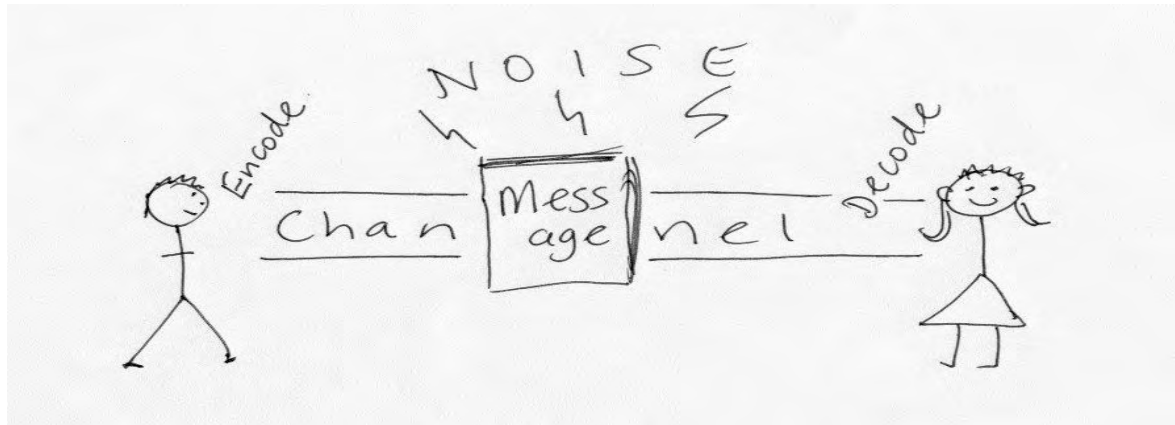


...and it even complained about 'exceptional' Finland

That said, I would like to stress that the principle of co-operation between State Parties and the CPT is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken to improve the situation in the light of the Committee's recommendations. In this respect, and despite ongoing efforts in a number of areas, the delegation is concerned by the lack of sufficient progress in the implementation of many of the CPT's long-standing recommendations (such as on the detention of remand prisoners in police prisons, on the practice of "slopping out" in prisons, on the regime for prisoners segregated in closed units and on the judicial review of involuntary psychiatric hospitalisation measures). I will speak about these matters in more detail later.

What goes wrong?

- On-going dialogue between the CPT and member states
- Assumption: power of rational arguments + shared objective
- How does the dialogue take place in practice?



Responding to the findings and recommendations of the CPT

1. “We fully agree and follow up”
2. “You’re wrong”
3. “It’s not our fault”
4. “In reality everything works perfectly”
5. “We don’t contest your findings, but we won’t change anything”
6. “We don’t contest your findings, but we cannot change anything”
7. “We need to investigate this”
8. Answers that raise new questions
9. Partial answer
10. No answer

(1) “We fully agree and follow-up”

- ‘A Bruges, l’obligation de travail imposée aux femmes non condamnées a été supprimée immédiatement après la visite du Comité’ (CPT/Inf(95) 6 p. 48)
- ‘Les autorités compétentes confirment que le chauffage a été réparé’. (CPT/Inf (2011) 7, p. 35)

(2) “You’re wrong”

- ‘C’est à tort que le séjour dans la zone de transit est présenté comme une détention de personnes. Les étrangers qui arrivent à l’aéroport sans les documents d’entrée requis ne sont pas enfermés : l’accès au territoire belge leur est refusé’ (CPT/Inf(95) 6 p. 32)
- ‘...tirer de telles conclusions (“manque de professionnalisme flagrant, attitude nonchalante, ...) à partir de données si fragmentaires ne paraît pas faire preuve d’une totale objectivité’ (CPT/Inf(99) 6 p. 13)
- ‘La prison de Tilburg est une annexe de la prison de Wortel et, à ce titre, est considérée comme une prison belge. Il n’est donc nullement question d’un transfèrement interétatique, mais d’une mesure d’ordre intérieur à l’administration pénitentiaire belge. De ce fait, le consentement du détenu n’est pas davantage requis que pour un transfèrement vers une autre prison belge.’ (CPT/Inf (2011) 7, p. 27)
- ‘Le Gouvernement précise que les chiffres avancés par le Comité (1 psychologue et 2 assistants sociaux) pour la prison de Forest ne correspondent pas à la réalité’ (CPT/Inf (2012) 37, p. 7)

(3) “It’s not our fault”

- *Inmates are to blame:*
- ‘La relative médiocrité de l’équipement résulte non seulement de certaines restrictions budgétaires mais aussi du fait que des détenus sont eux-mêmes souvent responsables de très nombreuses dégradations volontaires’ (CPT/Inf(95) 6 p. 47)
- ‘Si le système d’interphone est hors d’usage à la suite de nombreuses dégradations commises par les détenus, le système d’appel par voyant lumineux fonctionne et une équipe d’entretien s’efforce de répondre au jour le jour aux pannes et défauts constatés’ (CPT/Inf(95) 6 p. 48)
- La malpropreté et la négligence de certains détenus peu soucieux du bien-être collectif sont à déplorer’ (CPT/Inf(96) 7 p. 17)
- ‘Si les mauvaises conditions matérielles dans les ailes non encore rénovées ne sont pas contestables, il convient cependant de souligner que le vandalisme de certains détenus ne fait qu’aggraver la situation et oblige à d’incessantes remises en état. Un tel vandalisme se rencontre également dans les ailes rénovées’ (CPT/Inf(99) 6 p. 51)

- ***Scarcity on the labour market (e.g. nurses)***
- ***Free market***
- ‘Dans ces conditions, la Régie ne peut se lancer dans la fabrication de produits qui ne pourraient pas être écoulés sur le marché ni exercer une concurrence déloyale vis à vis des entrepreneurs privés’ (CPT/Inf(99) 6 p. 40)
- ***Lack of resources***
- ***Other authorities are to blame (local, communities, etc)***
- L’autorité locale ne désire pas, pour les raisons que l’on peut deviner, fournir un matelas aux personnes qui se trouvent en état d’ivresse’ (CPT/Inf(95) 6 p. 9)
- ‘Pour la direction de cet établissement, l’installation d’une table et de chaises dans une cellule de punition (cachot) ne semble pas opportun. Un tel matériel augmenterait le risque de suicide (pendaison) et pourrait être utilisé comme une arme’ (CPT/Inf(99) 6 p. 71)

(4) “In reality everything works perfectly”

- ‘Il n’est pas possible de réduire le nombre de ‘duos’ dans la conjoncture actuelle. Par ailleurs, il convient de noter que de nombreux détenus sont demandeurs de ‘duos’ (CPT/Inf(95) 6 p. 49)
- ‘le Gouvernement fédéral confirme sa volonté d'inscrire les normes qualitatives générales et de sécurité qui existent pour les bâtiments de justice (y compris donc ceux qui abritent éventuellement des complexes cellulaires et/ou des espaces d'attente pour mineurs) dans des textes légaux. Il est à rappeler que dans les complexes cellulaires des bâtiments de justice, les détenus ne restent que quelques heures’ (CPT/Inf(2011) 7, p. 12)
- ‘L’instauration d’un service minimum en prison n’est, actuellement, pas à l’ordre du jour’ (CPT/Inf(2011) 7)
- ‘Le Gouvernement précise toutefois que les personnes hébergées dans les ailes A et B disposent d’un régime quasi-ouvert et travaillent en journée, ce qui leur permet l’accès à des toilettes. L’aile B dispose par ailleurs d’une toilette et d’un urinoir utilisable par les détenus lorsqu’ils sont hors de leur cellule. Sauf cas particuliers, le seau hygienique n’est utilisé par les détenus que la nuit’ (CPT/Inf(2012) 37, p. 5)

(5) “We don’t contest your findings, but we won’t change anything”

- ‘A Bruges, il est exact que la présence d’un mur en béton diminue la vue vers l’extérieur et pourrait être démolie sans diminution de la sécurité. Cette destruction ne constitue cependant pas une priorité de l’Administration’ (CPT/Inf(95) 6 p. 45)

(6) “We don’t contest your findings, but we cannot change anything”

- *E.g. political crisis*
- ‘...l’absence de gouvernement fédéral pleinement en fonction au niveau fédéral depuis sa démission le 22 avril 2010 a une implication importante sur la mise en oeuvre des observations émises par le CPT; de telles circonstances faisant obstacle à la prise d’initiatives politiques’ (CPT/Inf(2011) 7, p. 4)

(7) “We need to investigate this”

(8) Answers that raise new questions

- ‘Une attention particulière sera apportée à cette question’ (CPT/Inf (2011) 7, p. 14)
- ‘L’accord du gouvernement formé depuis décembre 2011 prévoit des ‘mesures plus contraignantes’ en cas, d’évaluation négative du protocole d’accord du Comité de Secteur III-Justice n 351 du 19 avril 2010 (voir ci-dessous), ou en cas de grèves ne respectant pas le protocole. Deux propositions de loi visant à instaurer un service garanti sont également déposées au Parlement’ (CPT/Inf(2012) 37 p. 17)

(9) Partial answer

(10) No answer

- Thank you for your attention
- Do not hesitate to get in touch with me about this lecture:
 - tom.daems@kuleuven.be
 - @eurocriminology

**From young adult offenders to repeat offenders:
looking at the Dutch prison system and the
impact of detention on prisoners from an
academic and judicial point of view**

Sanne Struijk (LL.M; Ph.D.)
Erasmus School of Law
Rotterdam, the Netherlands



Co-funded by the Justice Programme of the European Union 2014-2020

Overview

- Dutch prison system in a nutshell
- Repeat Offenders
- Young adult offenders
- Personal remarks and experiences

Dutch prison system in a nutshell

- 17 million Dutch inhabitants (2016)
- total prison capacity suited for adults: 11,500 (2015)
- average inflow of adults: 38,400 (2015)
- 57 prisoners per 100,000 inhabitants (2015)
- half of the prisoners released had a stay of ≤ 3 weeks (2015)
- yet, an increase of whole life sentences: ± 40 people (2016)
(\rightarrow a major theme since ECtHR Vinter / Hutchinson / Murray!)

Erapur

Dutch prison system in a nutshell

- (Just) 2 selection criteria:
 - Gender
 - Level of security:
 - Very limited secured
 - Limited secured
 - Standard secured
 - Full secured
 - Extremely secured (“supermax prison” \rightarrow violations of art. 3 ECHR due to “the combination of routine strip-searching with the other stringent security measures”)

Erapur

Dutch prison system in a nutshell

- Other detention facilities:
 - Forensic care (e.g. TBS measure): capacity of 1,630 (2015)
 - **Juvenile Detention Centres**: capacity of 647 (2015)
 - Administrative detention for irregular migrants ('illegals'): capacity of 1,179 (2015)

Erapur

Dutch prison system in a nutshell

- Some **characteristics of the prison system**:
 - Human regime (at least, originally and relatively...)
 - Strong **belief in prisoner's rights**: a Penitentiary Principles Act for respectively adults, juveniles, and TBS-detainees
 - E.g. the right to complain and to appeal
 - Increasing **emphasis on prisoner's individual responsibility**:
 - system of promoting and demoting
 - taking responsibility (good behaviour) is rewarded

Erapur

Dutch prison system in a nutshell

- Some characteristics of the prison system:
 - Reintegration 'support' concerning 5 basic needs:
 - Work and income
 - Housing
 - ID
 - Debts
 - Care
 - Why? (Relatively) high recidivism rates...

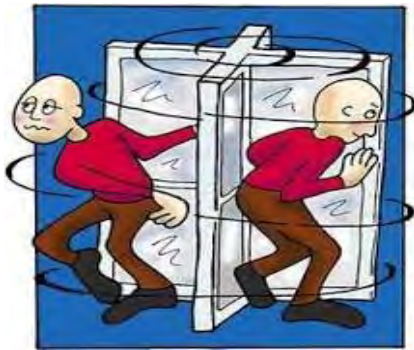
Erapur

Dutch prison system in a nutshell

- Some recidivism rates:
 - Adult 2 year detention recidivism rate: 30.8% (outflow 2013)
 - Adult 2 year general recidivism rate: 47.3% (outflow 2013)
 - Youth 2 year detention recidivism rate: 26% (outflow 2012)
 - Youth 2 year general recidivism rate: 54.5% (outflow 2012)
 - The 6 or 8 year rates are much higher
 - Higher rates for specific crimes and offender categories

Erapur

Repeat Offenders



Erafun

Repeat Offenders

- Repeat offender population: \pm 19,000
- Most **persistent repeat offender** population: \pm 5,000
→ 3.8% of the total offender population, but responsible for a **disproportionate amount of total crime**
- 2 year recidivism rate: 70-80%
- 8 year recidivism rate: $>$ 90%
- (Comorbid) **problems**: housing, unemployment, income, education, relationships, behavioral skills, (drug) addictions, mental disorders, etc.

Erafun

Repeat Offenders

- Sentencing repeat offenders:

- From all types of diversion to coercion: imprisonment and in particular the **custodial security measure ISD**
- ISD: not retributive (penalty) but preventive (measure)
- Legal aims: **to protect society through confinement (and possibly through treatment) and to end recidivism**
- For whom: all types of repeat offenders, including md
- Criteria: e.g. **prior recidivism** (≥ 3 convictions, sic!) and a **risk of future recidivism** (risk and treatability assessment)

Ezapung

Repeat Offenders

- Sentencing repeat offenders:

- Duration: **max 2 years** (in practice: always 2 years, net!)
 - possibly < 2 years: interim evaluation by judiciary
 - possibly > 2 years: repeated ISD order
- Content:
 - treatment, up until 'assessed' lack of success
 - otherwise 2 years of basic confinement
 - 3 phases: from intramural towards extramural
 - difficulties in implementing

Ezapung

Repeat offenders

- The judiciary clearly supports the legislative aims:
 - imposition of the ISD upon unmotivated repeat offenders
 - recurrent imposition of the ISD
- But always from a long-term meaningful perspective:
 - subsidiarity: the ISD is not a cure all, but a last resort
 - aims of public safety & ending recidivism: not a short-term interpretation (incapacitation) but a long-term interpretation (treatment & rehabilitation)

Ezapung

Repeat offenders

- The ISD appears to be effective:
 - 12-16% lower recidivism rate (but still 72%!)
 - average prevention of 9.2 crimes a year per person
 - a positive cost-benefit analysis
 - but **only incapacitative effects!**
 - and, **only small numbers** → 420 impositions in 2005, and 280 in 2012
 - yet, **currently increasing** due to a new focus on...

Ezapung

Young adult offenders

- New policy, including the [Young adult offenders law \(2014\)](#):
 - extension of the legal possibility to [apply youth sanctions to young adult offenders](#) → from age 21 to 23
 - policy to stimulate the use of this possibility
- Main [arguments legislator](#):
 - criminality: 1/3 of the suspects is 15 to 23 years old
 - brain research: adolescent brain is still developing
 - effective youth sanctions available

Erapung

Young adult offenders

- [Sentencing](#) young adult offenders (18-23):
 - not in a prison but [in a Juvenile Detention Centre](#)
 - regime: focus on [education](#) in the broadest sense
 - during pretrial detention as well as the execution of an imposed [custodial youth sanction](#) →
 - youth detention (max. 2 years)
 - measure 'Placement in Juvenile Detention Centre' ("youth TBS" → max. 3 years, can be prolonged up to 7 years)

Erapung

Young adult offenders

- 18-23 years old in Adult Prisons:

2011 1733 (15%)

2015 839 (9%)

- 18 years and older in Juvenile Detention Centres:

2011 298 (53%)

2015 291 (71%)

- Many **implications** for the regime and the detainees composition within Juvenile Detention Centres

Erapus

Personal remarks and experiences

- Being:

- academic **researcher**
- **judge** (thus, the imposition of sanctions)
- **chair of the complaint committee of the prison in Rotterdam** (thus, the execution of sanctions)

Erapus

Personal remarks and experiences

- See for further research on the impact of detention e.g.:

- the Prison Project (www.prisonproject.nl)
- government research institute (<http://english.wodc.nl>)

Erasmus

Thank you!

struijk@law.eur.nl



Erasmus

THE SPANISH NATIONAL PREVENTIVE MECHANISM



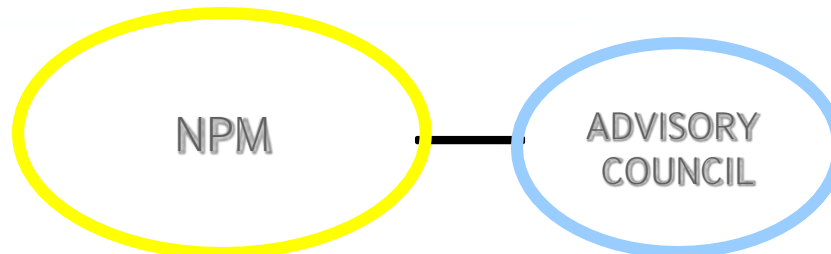
**“IMPROVING MEASURES RELATED TO DETENTION CONDITIONS AT
EU LEVEL”**

<http://mnp.defensordelpueblo.es>



Co-funded by the Justice Programme of the European Union 2014-2020

- 2006 - Spain ratifies the OPCAT
- 2009 - The Parliament appoints the Ombudsman as the National Preventive Mechanism (NPM) of Spain (adding a Sole Final Provision to the Organic Act 3/1981 of the Ombudsman by the Organic Act 1/2009 of 3rd November).
- 2010 - beginning of NPM work.
National Mechanism for the Prevention of Torture
- 2010-2016 - After 6 years of activity, the NPM has carried out more than 500 visits.



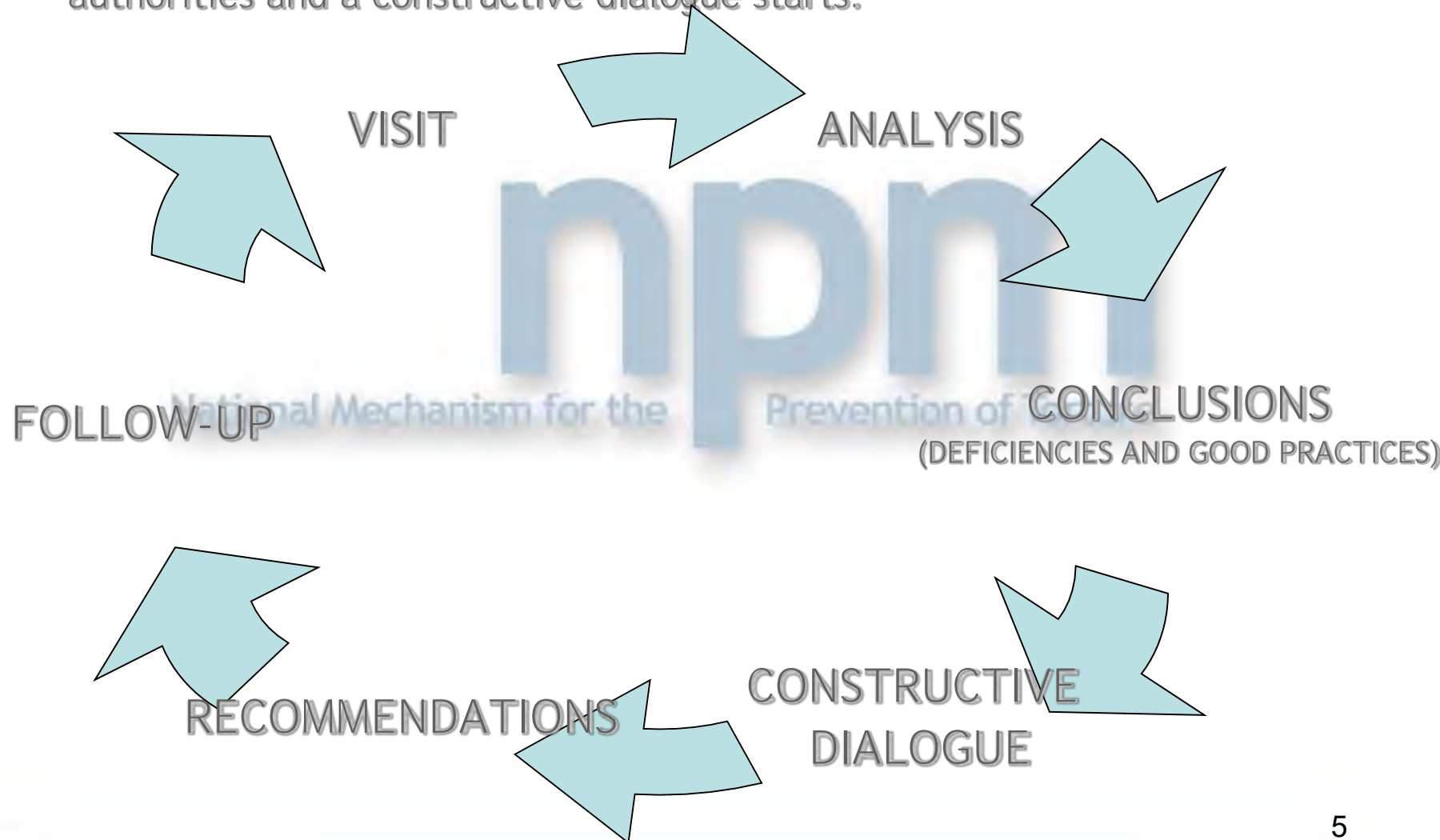
- It is foreseen in the amendment of the Ombudsman Law that introduced the NPM.
- It is a technical and legal cooperation body for the performance of the duties of the NPM.
- The Advisory Council reunites twice a year. So far, has met twice (June and December 2013).
- Tasks:
 - Proposing visits
 - Making proposals to improve the methodology of visits and their follow-up
 - Making reports concerning legislation on the subject
 - Proposing training programs and seminars in the prevention of torture
 - Follow-up of the reports of the NPM and SPT
 - Any other issues that may be of interest

The aim of the NPM is to promote changes to make torture or ill-treatment difficult or impossible to happen and to strengthen the protection of persons deprived of liberty

The NPM's tasks are essentially:

- To carry out regular unannounced preventive **visits** to detention centres
- To produce **reports** of the visits
- To make **recommendations** to the authorities
- To engage in a meaningful process of **dialogue with the State** concerning the implementation of its recommendations
- To make proposals and observations concerning **legislation** on the subject
- To **follow-up** on the implementation of any recommendations
- To make an **annual report**
- To establish and maintain contacts with other **NPMs** and the **SPT** with a view to sharing experience and reinforcing its effectiveness
- To establish and maintain contact with the **civil society**

The problems and shortcomings are brought to the attention of the authorities and a constructive dialogue starts:



Tasks

Carry out unannounced visits to places of deprivation of liberty.

- Compile reports on the visits.
- Send Recommendations to authorities.

Maintain dialogue with the Public Administration for the execution of its Recommendations.

- Formulate proposals for regulatory reforms.
- Supervise the execution of Recommendations.
- Compile an Annual Report.
- Maintain contact with other NPM and SPT to exchange experiences and reinforce effectiveness.
- Maintain contact with Civil Society.

Phases

- **Preparatory Phase**

Selection criteria for facilities to be visited.

Time passed since the last visit.

Recently introduced regulatory amendments.

Following up the results.

News in media outlets.

Information from civil society organizations.

Supervision of all national territory.

In order to prepare the visit a dossier is compiled including information on the type of center, the activity, organizational structure and regulations.

The visit

Criteria for compiling the team:

Objective of the visit.

Knowledge on the establishment and its problems.

Size of the establishment and number of detained persons.

Commission of external technical experts (doctors, psychiatrists, psychologists, etc.).

Participation of members of the NPM Advisory Council and Regional Autonomous Commissioners.

Persons deprived of liberty and the center's personnel can have confidential interviews with the NPM. At the end of the visit, the manager is informed of good practices and deficiencies detected.

Results of the visit

Once the visit is concluded, the Resolutions and Conclusions addressed to the authorities are recorded.

Publication

All activity is reported in the published annual reports and on the Ombudsman webpage. The webpage publishes the facilities visited, the composition of the team, the methodology as well as conclusions, Resolutions sent to the authorities and responses received. The webpage offers geographical and chronological information regarding all facilities visited.

The annual report details the conclusions of each visit and adds photographs of the centers visited.

Ill-treatment prevention

- Istanbul Protocol investigations
- Efficient internal investigations
- Access to legal orientation services
- Efficient system for the filing of complaints and claims
- A record or book should exist to enter the ill treatment-related complaints filed by inmates
- Training of staff
- Issue adequate injury reports, in accordance with the policy established in the report of the NPM “Injury reports on people deprived of their liberty”, of 2014
- Obligation for public officers to wear their compulsory identification recording the post of work and number of professional document

Mental health

- Adequate psychiatric and psychological assistance to inmates
- Special program for mental health to be implemented
- Increase the frequency of the psychiatric attention given to prisoners
- Improve the measures to avoid suicide conduct

Medical attention

- Medical exploration should be carried out in direct contact with the inmate and without violating the right to privacy and confidentiality
- Language not to pose an impediment for the fluid communication between the healthcare services and the inmates
- Enough medical staff
- Medical assistance 24 hours
- Suitable supply of medication

Isolation and coercitive measures

- prolonged isolation: only for the time strictly necessary and when no other less burdensome manner exists, and that they are not a concealed form of punishment
- mechanical restraints: specifically excluding their use as punishment. Examined by medical services. Applied exceptionally when no other less burdensome manner exists to achieve the result purpose, and considering the need for application in each particular case. Reduced to the minimum time necessary and proportionately

Isolation and coercitive measures

- metal handcuffs are indicated only for short contentions
- reporting to the penitentiary judge of the beginning and ending of its application should take place immediately
- training of personnel on the application of coercive measures should be improved and special courses should be given

Activities and treatment

- The staff should receive training in human rights
- Prisons must have treatment, educational, cultural, leisure and work programs, facilitating the inmate's reintegration
- Specialised treatment programs addressed to re-education and social reinsertion of convicts
- Offer of training workshops
- **Increase of paid activities**
- Suitable sports facilities, free time available and sufficient personnel to manage them
- Oral and written information on the features of the centre and their rights and duties. Suitable translation system

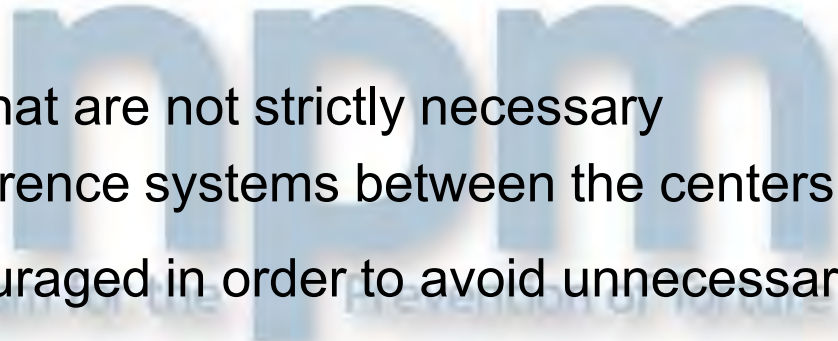
Contacts with the exterior world

- Contact of the inmates with the exterior world should be facilitated
- Contact with their relatives and lawyer
- Adapting the specific areas for the visits
- Installing closed telephone boxes, to preserve the privacy
- Making the regulation for visits and telephone contacts more flexible when possible

- **Material conditions**
- It should be provided food of good quality and with suitable quantity
- Video-surveillance systems should be suitable covered at centers
- Installation of inter-phones or sound calling systems in cells
- Fire safety measures should be improved
- Increase the size of the cells and improve their furniture

Transfers

- Allow the inmates to take enough belongings with them during transfers
- Avoid those transfers that are not strictly necessary
- The use of video-conference systems between the centers and the courts should be encouraged in order to avoid unnecessary transfers





THANK YOU!

npm
the Prevention of Torture

European Rules for Juvenile Offenders Subject to Sanctions or Measures and Trends in Deprivation of Liberty

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Co-funded by the Justice Programme of the European Union 2014-2020

Protection of the rights of juveniles in the light of international documents

1. The notion of 'a juvenile' and 'a child in conflict with the law'
 2. Children are not excluded from the protection provided by general international documents in the field of human rights:
 - the UN International Covenant on Civil and Political Rights
 - the European Human Rights Convention
 - the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.
-

International specific documents related to children in conflict with the law

1989 United Nations Convention on the Rights of the Child

1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice
("The Beijing Rules")

1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty
("The Havana Rules")

2008 Council of Europe European Rules for Juvenile Offenders subject to Sanctions or
Measures

2010 Guidelines of the Council of Europe on child friendly justice

European Rules for Juvenile Offenders Subject to Sanctions or Measures – the scope of application (rules 21-22)

- **The aim** of the rules is to uphold the rights and safety of juvenile offenders subject to sanctions or measures and to promote their physical, mental and social well being when subjected to community sanctions or measures, or any form of deprivation of liberty.
 - **'Juvenile offender'** means any person below the age of 18 who is alleged to have or has committed an offence.
 - **'Offence'** means any act or omission that infringes criminal law.
The rules apply to any such infringement which may be dealt with by a criminal court or any other judicial or administrative authority.
-

European Rules for Juvenile Offenders Subject to Sanctions or Measures – the scope of application (rules 21-22)

- **'Community sanctions or measures'** means any sanction or measure other than a detention measure which maintains juveniles in the community and involves some restrictions of their liberty through the imposition of conditions and/or obligations.
 - **'Deprivation of liberty'** means any form of placement in an institution by decision of a judicial or administrative authority, from which the juvenile is not permitted to leave at will.
 - **'Institution'** means a physical entity under the control of public authorities, where juveniles are living under the supervision of staff according to formal rules.
 - These rules may also apply to the benefit of other persons held in the same institutions or settings as juvenile offenders.
 - **Broad meaning of 'deprivation of liberty' which follows the UN approach.**
-

United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990

The deprivation of liberty means any form of:

detention or imprisonment;
or the placement of a person in a public or private custodial setting,
from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

The definition of the deprivation of juveniles of their liberty:

- goes far beyond placing them in prisons or youth prisons, and
 - shall be understood as any form of detention or imprisonment or the placement of a person under the age of 18,
 - by order of any judicial, administrative or any other public authority,
 - in a public or private custodial setting,
 - from which this person is not permitted to leave at will.
-

European Rules for Juvenile Offenders Subject to Sanctions or Measures - basic principles (rules 1-20)

- **Principle of respect for human rights.**
 - **Principle of social integration and prevention of re-offending** applies to the imposition and implementation of sanctions or measures.
 - **Principle of minimum intervention** - sanctions and measures shall be determinate and imposed for the minimum necessary period and only for a legitimate purpose.
 - **Principles of best interests of juvenile offenders, proportionality and individualization** - the imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well being, development, capacities and personal circumstances.
-

European Rules for Juvenile Offenders Subject to Sanctions or Measures - basic principles (rules 1-20)

- **Principle of deprivation of liberty as a last resort** - deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible (special efforts to avoid pre-trial detention).
 - **Principle of non-discrimination** – the imposition and implementation of sanctions or measures shall be without discrimination on any ground such as sex, race, colour, language, religion, sexual orientation, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
 - **Principle of a juvenile's active participation in juvenile proceedings** - any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.
 - **Principle of mediation** - mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.
-

The age of criminal majority and minimum age of criminal responsibility of juveniles according to international documents

□ 1989 UN Convention on the Rights of the Child:

- **the age of criminal majority** (Art. 1) - for the purposes of the Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier,
- **the minimum age of criminal responsibility of children** (Art. 40:3) - States Parties shall seek to promote the establishment of laws (...) and in particular the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law,
- the position of the Committee on the Rights of the Child (General Comment no 10).

□ 2008 European Rules for Juvenile Offenders Subject to Sanctions or Measures:

- **the minimum age of criminal responsibility** - minimum age for the imposition of sanctions or measures as a result of the commission of an offence shall not be too low and shall be determined by law,
- **the age of criminal majority** - "juvenile offender" means any person below the age of 18 who is alleged to have or who has committed an offence.

Age of criminal majority in European countries

Source: Table 2: Age and Criminal Responsibility, Council of Europe Annual Penal Statistics: SPACE 1 – 2-14

14	Hungary, Liechtenstein
16	Cyprus
17	Poland
18	Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, BH: Rep. Srpska, Bulgaria, Czech Rep., Denmark, Estonia, France, Georgia, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Romania, Russian Fed., San Marino, Serbia, Slovak Rep., Spain, Sweden, Switzerland, the FYRO Macedonia, Turkey, Ukraine, UK: England and Wales, North Ireland
18/21	Croatia, Finland, Slovenia, UK: Scotland
21	Germany, Portugal

The age of criminal majority and minimum age of criminal responsibility of juveniles in European countries

- **The age of criminal majority** usually is set at 18 years of age.
Exceptions are very rare:
 - in Poland the age of criminal majority is 17 years of age at the time of the commission of an offence
 - 17 years as the age of criminal majority raises concerns from the point of view of international standards.

 - **The minimum age of criminal (diminished) responsibility** of juveniles varies between countries.

It depends among others on the primarily welfare of justice approach.
-

The welfare approach to juveniles

- juveniles are not only perpetrators of offences but also so called pre-delinquent children, showing other problem behaviours
- juveniles are dealt with by special juvenile courts/tribunals or special juvenile commissions which have a large degree of discretion
- the procedure is informal without pronounced procedural safeguards,
- special courts or commissions dealing with juveniles act in the best interest of the child; the goal is protect, educate and reform the child, not to punish him or her,
- the typical measures of the welfare model are imposed for an indefinite period and applied according to the needs of the juvenile,
- **usually the law does not determine the minimum age limit for being a juvenile**; the upper age boarder for being a juvenile is the minimum age of the criminal majority,
- the juvenile court or commission functions not as a criminal court but rather as a social and educational agency.

The justice approach to juveniles

- juvenile justice system covers exclusively persons who infringed the criminal law,
- juveniles are treated as persons who are criminally responsible; their criminal responsibility is modified and diminished when comparing to adults,
- 'a juvenile' means a person who infringed the criminal law while being above the minimum age of (diminished) criminal responsibility of juveniles and below the age of criminal majority,
- the minimum age of criminal responsibility of juveniles is determined by the law,
- the state reactions are proportional to the gravity of the offence,
- the sanctions imposed on juveniles are of a determinate duration,
- the procedure tends to provide for the same guarantees as for adults,
- decisions are made in formal proceedings,
- the juvenile court as a matter of fact is a special criminal court,

In practice, the minimum age of criminal (diminished) responsibility of juveniles in most European countries is 14 or 15 years.

Age of criminal responsibility in European countries

Source: Table 2: Age and Criminal Responsibility, Council of Europe Annual Penal Statistics: SPACE 1 – 2-14

NAP	Belgium
8/12	UK: Scotland
10	Switzerland, UK: England and Wales, North Ireland
12	Ireland, Netherlands, Turkey
13	France, Monaco, Poland,
14	Albania, Andorra, Armenia, Austria, Azerbaijan, BH: Rep. Srpska, Bulgaria, Croatia, Cyprus, Estonia, Georgia, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Montenegro, Russian Fed., San Marino, Serbia, Slovak Rep., Slovenia, Spain, the FYRO Macedonia, Ukraine
15	Czech Rep., Denmark, Finland, Greece, Iceland, Norway, Sweden,
16	Luxembourg, Portugal, Romania

Deprivation of liberty of a juvenile as a measure of last resort and for the shortest period possible – a long-established principle

1985 UN Standard Minimum Rules for the Administration of Juvenile Justice:

Rule 17 .1(c). Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.

19.1 The placement of a juvenile in an institution shall always be a disposition of **last resort and for the minimum necessary period**.

1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules):

Rule 2. (...) Deprivation of the liberty of a juvenile should be a disposition of **last resort and for the minimum necessary period** and should be limited to exceptional cases. The length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release.

1989 UN Convention on the Rights of the Child:

Article 37 (b). The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a **measure of last resort and for the shortest appropriate period of time**.

2008 European Rules for Juvenile Offenders subject to Sanctions or Measures

Rule 10. Deprivation of liberty of a juvenile shall be a **measure of last resort and imposed and implemented for the shortest period possible**. Special efforts must be undertaken to avoid pre-trial detention.

2010 Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice

19. Any form of deprivation of liberty of children should be a **measure of last resort and be for the shortest appropriate period of time**.

Reasons for the *ultima ratio* approach to holding juveniles in detention:

- the recognition of physical and emotional development of juveniles, their vulnerability, and the importance of family and community ties,
 - high numbers of children who come to the attention of juvenile justice system have complex support needs, low levels of educational attainment and many health problems; these needs may be met safely and effectively in the community than in detention,
 - the recent literature review of youth corrections shows that detention has a negative impact on young people's mental and physical well-being, their education, and their prospects for employment,
 - congregating delinquent youth together in an institution negatively affects their behaviour and increases their chance of re-offending due to the process of "peer deviancy training" and the diminished opportunity of pro-social modelling.
-

In European countries juvenile offenders may be locked up in a variety of establishments:

- pre-trial detention centres,
- adult prisons (with special wings or separate areas for juveniles),
- specialised juvenile prisons,
- juvenile mental health institutions,
- educational or correctional centres,
- closed welfare institutions.

In different European countries institutions for juvenile offenders are subordinated to different ministries responsible for issues related to justice, education, social services or public health services.

Minimal age for the application of custodial sanctions and measures

Source: Table 2: Age and Criminal Responsibility, Council of Europe Annual Penal Statistics: SPACE 1 – 2-14

NAP	Portugal
10	UK: North Ireland
12	Ireland, Netherlands, Turkey
13	Monaco
14	Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, BH: Rep. Srpska, Bulgaria, Croatia, Cyprus, Estonia, Georgia, Germany, Hungary, Italy, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Montenegro, Romania, Russian Fed., San Marino, Serbia, Slovak Rep., Spain,
15	Czech Rep., Denmark, Finland, Greece, Iceland, Norway, Poland, Switzerland, UK: England and Wales
16	France, Luxembourg, Montenegro, Slovenia, the FYRO Macedonia, Ukraine, UK: Scotland
18	Sweden


Outlook

- The minimum age of (diminished) criminal responsibility of juveniles in Europe is set mostly at 14 years
 - The minimum age at which a young person can be imprisoned varies between 10 and 18 years and is strongly related to the age of criminal responsibility
 - Children below the minimum age of criminal responsibility may also be deprived of their liberty in different educational/correctional/psychiatric institutions
 - Lack of consistent data on the number of juveniles deprived of their liberty in institutions outside the prison system in European countries
 - Need to strengthen the social support services, including through training and increase in the number of specialists from social centers for families, children and young persons, ensure psychosocial rehabilitation and programmes for children in conflict with the law
 - Need to continue to adapt legislation and policy to ensure accordance with CoE recommendations regarding the treatment of juvenile offenders.
-

DIRECTIVE (EU) 2016/800



Procedural safeguards for children who are suspects or accused persons in criminal proceedings

 Co-funded by the Justice Programme of the European Union 2014-2020



European Council



European Parliament

1



OBJECTIVE

- To establish procedural safeguards ensuring that children are able to understand and follow criminal proceedings and to exercise their rights.
- To exercise their right to a fair trial.
- To prevent children from re-offending fostering their social integration.

2



SCOPE

- Children who are suspects or accused persons in criminal proceedings.
- Children who are requested persons from the time of their arrest
- Persons who were children when they became subject to the proceedings but have subsequently reached the age of 18.
- It shall fully apply where the child is deprived of liberty, irrespective of the stage of the criminal proceedings.

3



GUIDING PRINCIPLES

- **Child-Friendly Justice:** promote the Rights of the child, taking into account the Council of Europe guidelines on justice adapted to children.
- Member States should ensure that the best interest of the child is always a primary consideration, in accordance with Article 24. 2 of the Charter of Fundamental Rights of the EU.
- Special attention to preserve children's potential development and their social reintegration.
- **Quick and diligent handling of cases:** Criminal proceedings involving minors must be processed urgently and with due diligence.

4



RIGHTS OF CHILDREN

- Art. 5: holder of parental responsibility informed.
- Art. 6: to be assisted by a lawyer.
- Art. 14: protection of privacy.
- Art. 15.4: to be accompanied by the holder of parental responsibility
- Art. 18: free legal aid.

5



RIGHTS OF CHILDREN

- Art.7: individual assessment.
- Art. 8: medical examination and assistance.
- Art. 10 y 11: limitation of deprivation of liberty and to the use of alternative measures.
- Art. 12: specific treatment during deprivation of liberty.
- Art. 15.1: to be accompanied by the holder of parental responsibility during court hearings.
- Art. 16: appear in person at trial.
- Art. 19: effective remedies.

6



SPECIFIC MEASURES OF DEPRIVATION OF LIBERTY

- **Art. 10:** deprivation of liberty of children, at any stage of the proceedings, is limited to the shortest appropriate period of time and only as a measure of last resort.
- **Art. 11:** Member States shall ensure that, where possible, the competent authorities have recourse to measures alternative to detention.
- **Art. 12:** children deprived of liberty shall be held separately from adults, unless it is considered to be in the child's best interests not to do so.

7



SPECIFIC MEASURES OF DEPRIVATION OF LIBERTY

- Guarantee and safeguard their physical and mental health and development.
- Guarantee their right to education, also in the case of children with physical, sensory or intellectual disabilities.
- Ensure their regular and effective right to family life.
- Ensure the access to programs that foster their development and their social reintegration.
- Ensure the respect for freedom of religion or belief.

8



AUDIOVISUAL RECORDING OF QUESTIONING

- **Art. 9:** questioning of children by police or other law enforcement authorities during criminal proceedings must be audio-visually recorded.
- The IJJO position is that the audio-visual registration of each questioning cannot be subject to proportionality derogation, not event in case that the minor is not in custody.

9



TRAINING

- Specific staff training.
- appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both.
- 3. With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 2 to lawyers who deal with criminal proceedings involving children.
- 4. Through their public services or by funding child support organisations, Member States shall encourage initiatives enabling those providing children with support and restorative justice services to receive adequate training to a level appropriate to their contact with children and to ensure that they are trained to ensure that



SUMMARIZING

The Directive contributes positively towards a Child Friendly Justice:

- Necessity of specialization and training for professionals.
- Right to protection of privacy.
- Right to protection of confidentiality.
- Right to information.
- Respect of appearance and participation.

11



INTERNATIONAL
JUVENILE JUSTICE
OBSERVATORY

OBSERVATORIO
INTERNACIONAL
DE JUSTICIA JUVENIL

OBSERVATOIRE
INTERNATIONAL
DE JUSTICE JUVÉNILE

THANK YOU FOR YOUR ATTENTION!

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www.oijj.org

12

EUROPEAN PROJECTS

Protecting rights, restoring respect
and strengthening relationships:
enhancing restorative justice with
children and young people



Co-funded by the Justice Programme of the European Union 2014-2020

INTERNATIONAL
JUVENILE JUSTICE
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Juvenile Offenders Detention Alternative in Europe (JODA)



OBJECTIVE: identification of detention alternatives for juvenile in conflict with the law and on the exchange and promotion of best practices among key actors.

METODOLOGY:

- Field visits and seminars.
- Online training course.
- Manual of good practices.



IMPROVING JUVENILE JUSTICE SYSTEM

Manual + toolkit



OBJECTIVE: to improve the EU youth justice systems and to understand where they can be made more efficient and more child-friendly, focusing on a better implementation of the Guidelines of the Council of Europe on Child Friendly Justice and international standards.



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THANK YOU FOR YOUR ATTENTION!

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Reeducating and reintegrating juvenile offenders: community sentences and working with the judiciary to ensure their effective implementation

Madrid, 27- October 2016. Centro de Estudios Jurídicos.

1. Spanish legislation on juvenile offenders and general data on the measures implemented
2. Differential characteristics of the measures applied in the community
3. Community sentences: Professionals, Resources and Programs in Community of Madrid

Juan Fco. Franco Yagüe
Coordinator Department for
Children in Social Conflict,
Agency for the Reeducation
And Reintegration of Juvenile
Offenders, Madrid



Co-funded by the Justice Programme of the European Union 2014-2020



Community of Madrid
Agency for the Re-education
and Reintegration of
Juvenile Offenders

–Law 3/2004, of 10 December, for the creation of Community of Madrid's Agency for the Re-education and Reintegration of Juvenile Offenders

–Autonomous administrative body with the rank of Directorate-General

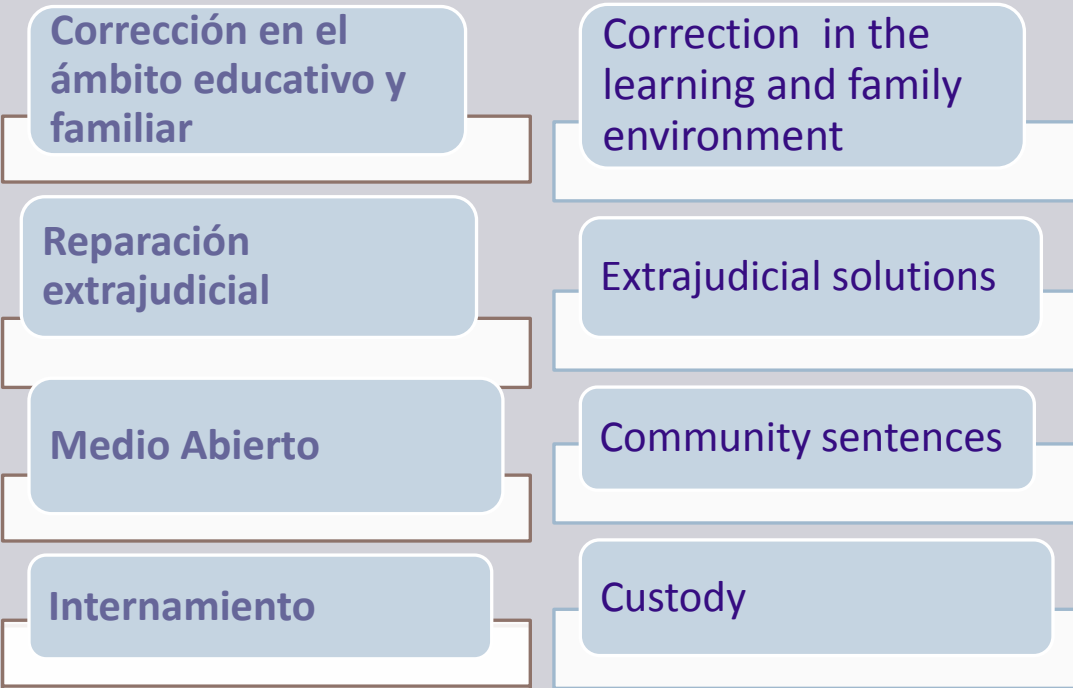
–Attached to the Regional Department with competence in the area of Justice Juvenile

–It takes on the implementation of sentences imposed on young offenders in the Community of Madrid

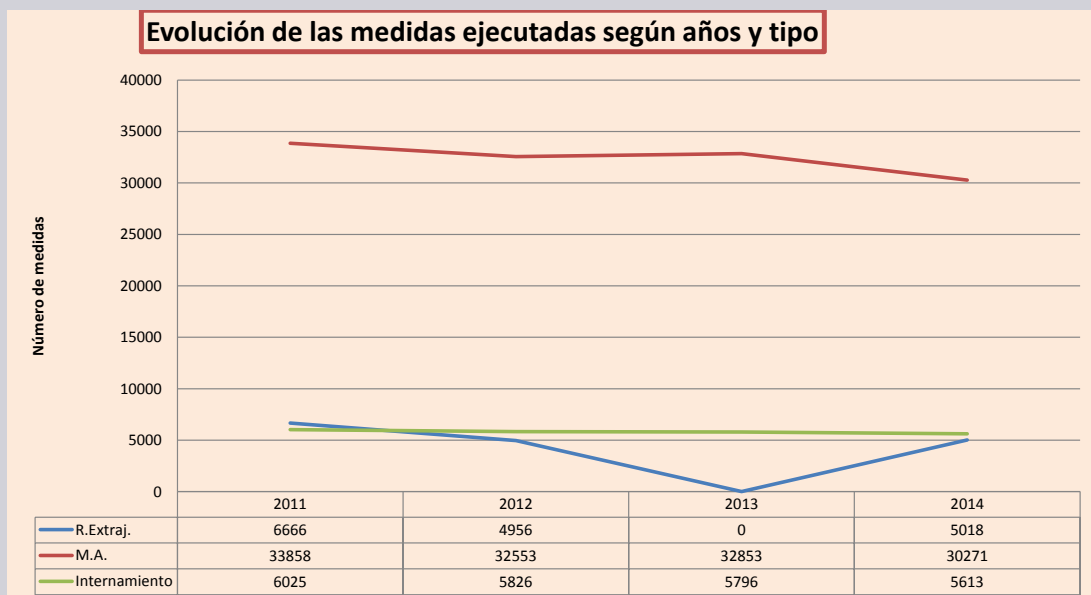
Basic Objective of the Agency

“To concentrate, develop and implement programs and actions that contribute to the aims of reintegration and education derived from the Organic Law 5/2000, of 12 January, regulating the Criminal Responsibility of Minors and other applicable regulations in force.”

Ley Orgánica Reguladora de la Responsabilidad Penal de los Menores 14-18 años
 Organic Law 5/2000 of 12 January regulating the Criminal Responsibility of Minors 14-18 years old)

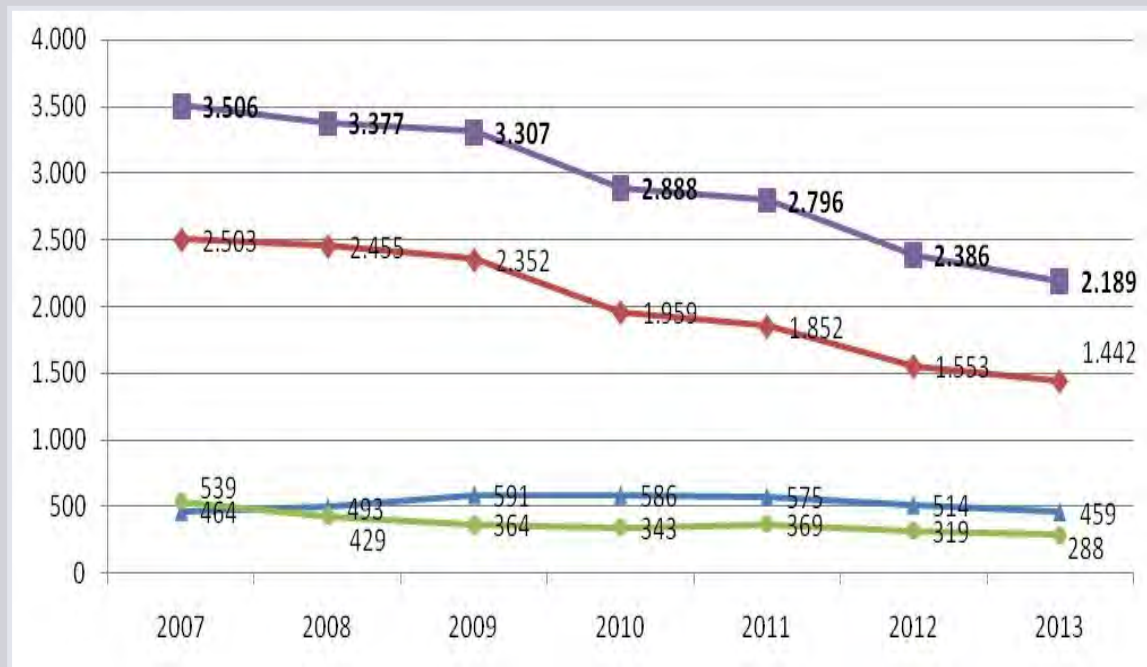


Total measures implemented in Spain by type, years 2011/2014



Fuente: Boletín estatal de datos estadísticos de medidas impuestas a menores infractores correspondiente al año 2014. Observatorio de Infancia, Ministerio de Sanidad, Servicios Sociales e Igualdad de España

Developments in the legal measures in the Community of Madrid 2007/2013: Total, Community sentences Extrajudicial Solutions and Custody



Reparaciones Extrajudiciales

- Conciliación
- Reparación social y del daño
- Actividad educativa

Extrajudicial solutions

- Reconciliation
- Social restoration & harm repairing
- Educational activity

Medidas en medio abierto

- Libertad vigilada
- P. B. Comunidad
- Asistencia a Centro de Día
- Tareas socioeducativas
- Convivencia con otra persona, familia o grupo educativo
- Tratamiento ambulatorio
- Permanencia de fin de semana en domicilio

Community sentences

- Probation
- Community Service
- Attending an attendance centre
- Socioeducative tasks
- Living with another family or educational group
- Outpatient treatment
- Weekend stay at home

Inserción sociolaboral

- Asesoramiento y motivación
- Formación
- Búsqueda activa de empleo
- Acompañamiento

Social integration and work experience

- Personal advising and motivation
- Training
- Job search
- Accompaniment

EXTRAJUDICIAL SOLUTIONS

MEDIACIÓN PENAL CON MENORES INFRACTORES



Los principios de la mediación son:

VOLUNTARIEDAD
En la entrevista inicial se podrá manifestar el deseo o no de participar.

CONFIDENCIALIDAD
La información recogida se utilizará únicamente en el proceso de mediación.

NEUTRALIDAD
El mediador/a no se posiciona ni representa a ninguna de las partes.

GRATUIDAD
Es un servicio gratuito.

MEDIACIÓN PENAL CON MENORES INFRACTORES

PROGRAMA DE REPARACIONES EXTRAJUDICIALES



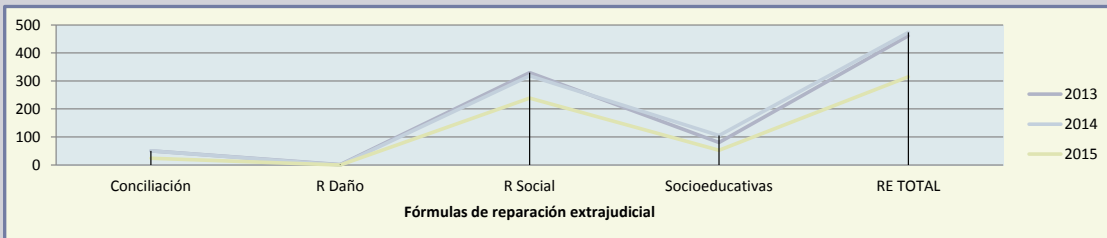
Agencia para la Reeducación y Reinserción del Menor Infractor

C/Albasanz Nº 2, 1ª planta
28037 - Madrid
Teléfono: 91 745 88 36
Fax: 91 745 88 40

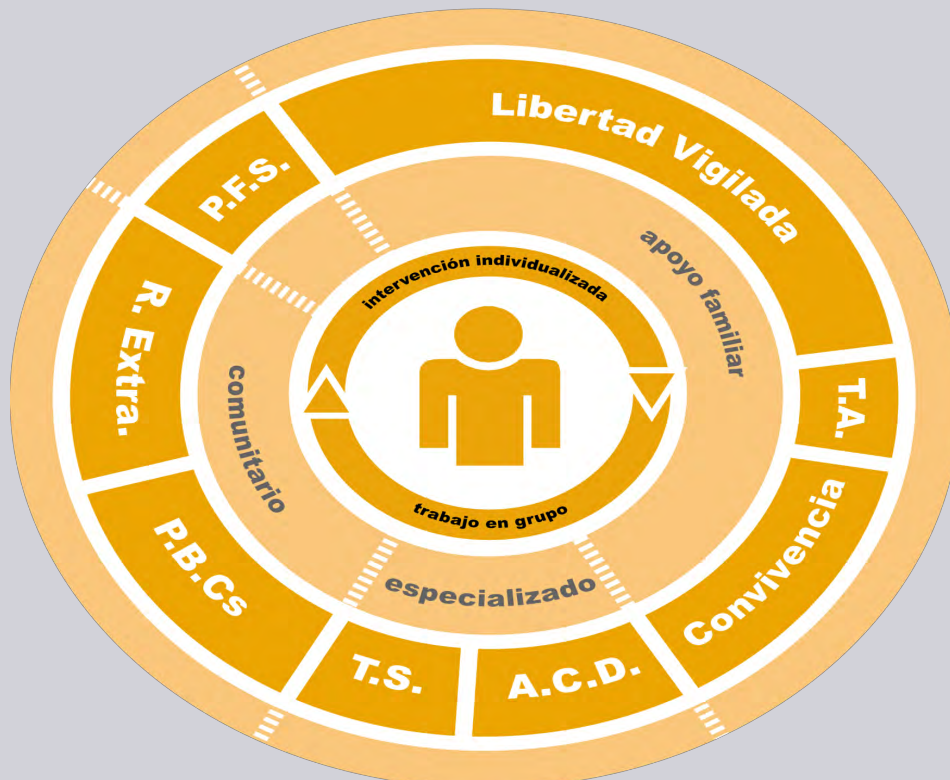




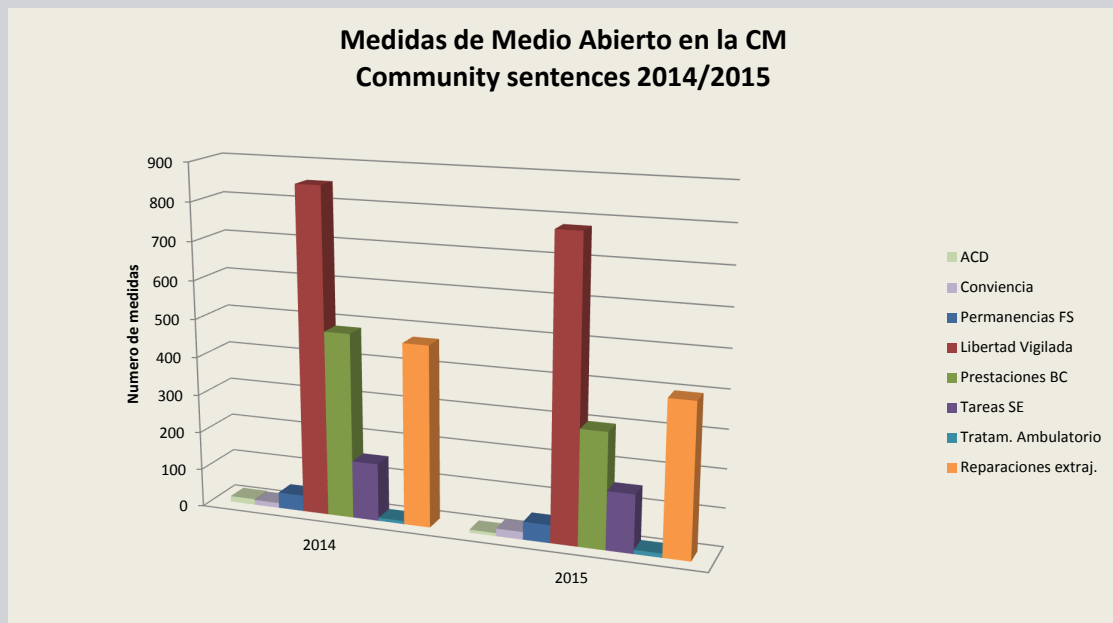
Agencia de la Comunidad de Madrid para la Reeducación y Reinserción del Menor Infractor



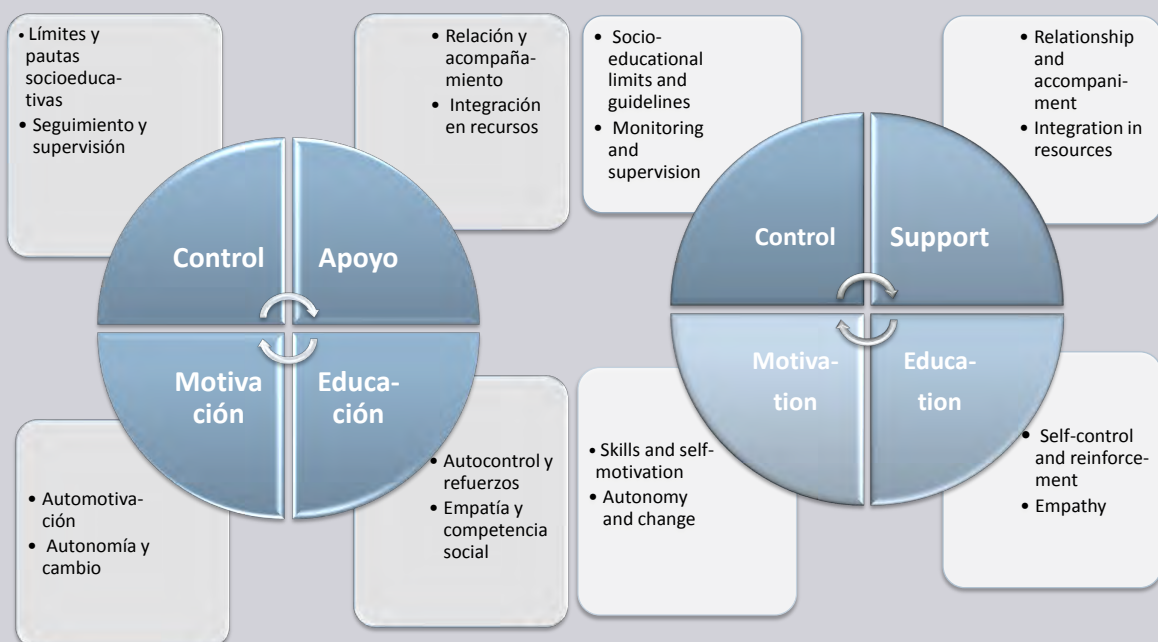
MEDIDAS Y ACTUACIONES EN MEDIO ABIERTO Y ÁMBITOS DE INTERVENCIÓN COMMUNITY SENTENCES AND AREAS OF INTERVENTION



Comunidad de Madrid nuevas altas de medidas de medio abierto 2014/2015



Principales objetivos y actuaciones en medio abierto Main objectives and actions regarding community sentences



ACTIVIDADES DE APOYO Y COMPLEMENTARIAS

Familiar

Padres

Menores

Mediación padres-menor

Escuelas de parentalidad positiva

Psicológico

Orientación y asesoramiento

Aprender solucionar problemas, reforzar el cambio...

Mejorar el autocontrol...

I.Sociolaboral

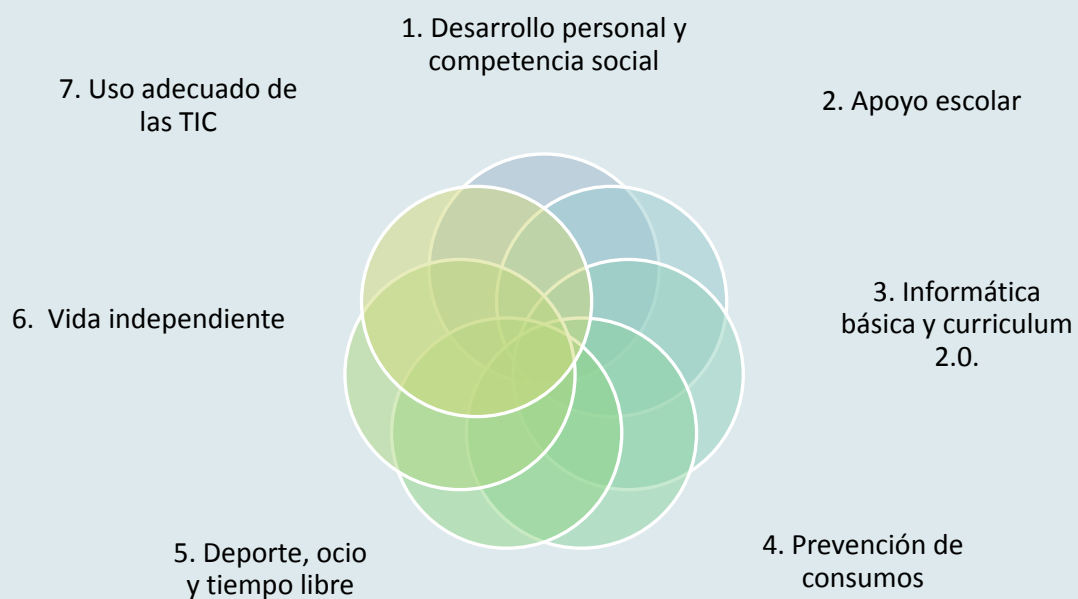
Orientación e itinerario de inserción

Formación básica y prelaboral

Búsqueda activa de empleo

Acompañamiento

Actividades Socioeducativas Social and Educational Activities

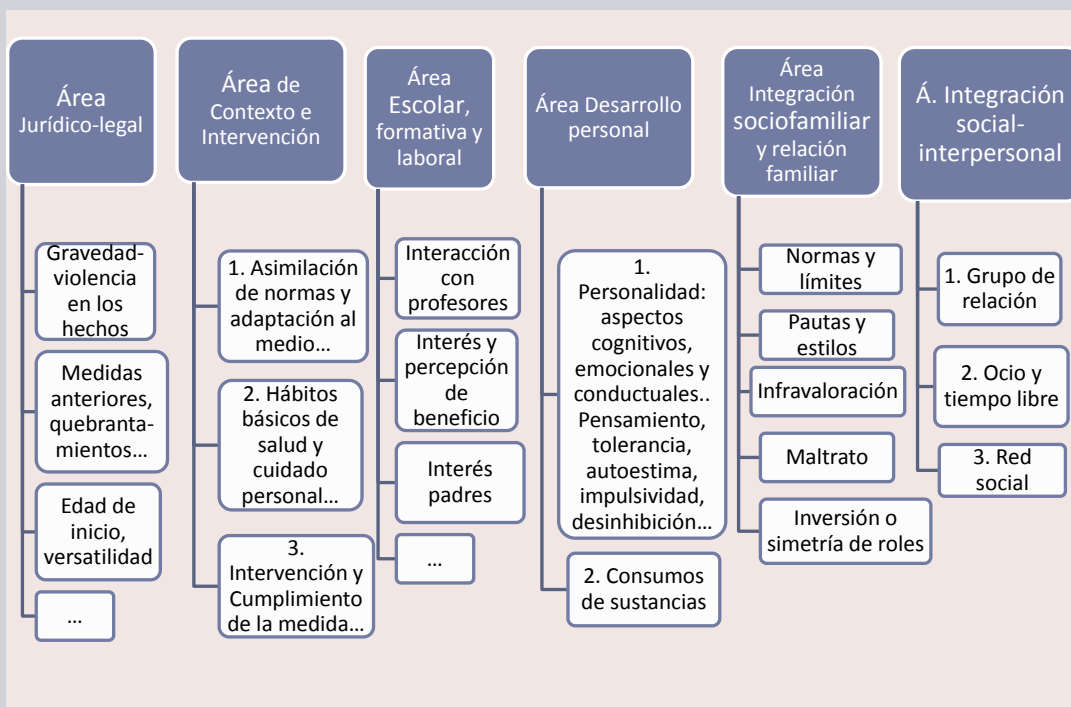


TICmenoRes

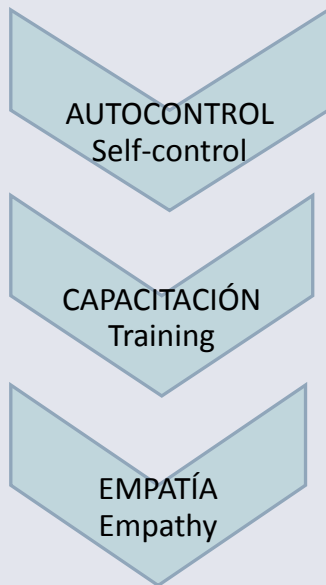
Program for the prevention of risk and appropriate use of TRIC



Previa: Determinar los factores de riesgo y las necesidades en cuanto a la intervención / *Previa:* determine the risk factors and the needs for intervention



Un paso más/ One more step



- Desarrollo personal y talleres grupales
- Técnicos y recursos propios

- Sensibilización, conocimiento del medio y las necesidades sociales, planificación
- Técnicos y recursos propios

- Responsabilización y ayuda a otros
- Recursos sociocomunitarios

Sensibilización
motivación,
capacitación

Conocimiento y participación en actividades y
cumplimiento de tareas

Evaluación...



Gracias
Thank you very much
www.madrid.org/agenciamenorinfractor



Co-funded by the Justice Programme of the European Union 2014-2020

Council Framework Decision 2008/909/JHA

State of play & legal and practical problems

Madrid 28 October 2016

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Introduction

Legal & Practical Concerns

Implementation Status

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Context

Key
Features

Flowchart

Previous instruments

- Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983
- Additional Protocol to this Convention of 18 December 1997

Objectives FD 909

- Application of mutual recognition to 'deprivation of liberty'-sentences
- Enhance cross-border cooperation in criminal matters
- Facilitate social rehabilitation of sentenced persons

Context

Key
Features

Flowchart

- Eligibility of sentences
- Consent requirements
- Consultation procedure
- Timeframe
- Specialty
- Refusal grounds
- Adaptation mechanism
- Transfer, transit and costs

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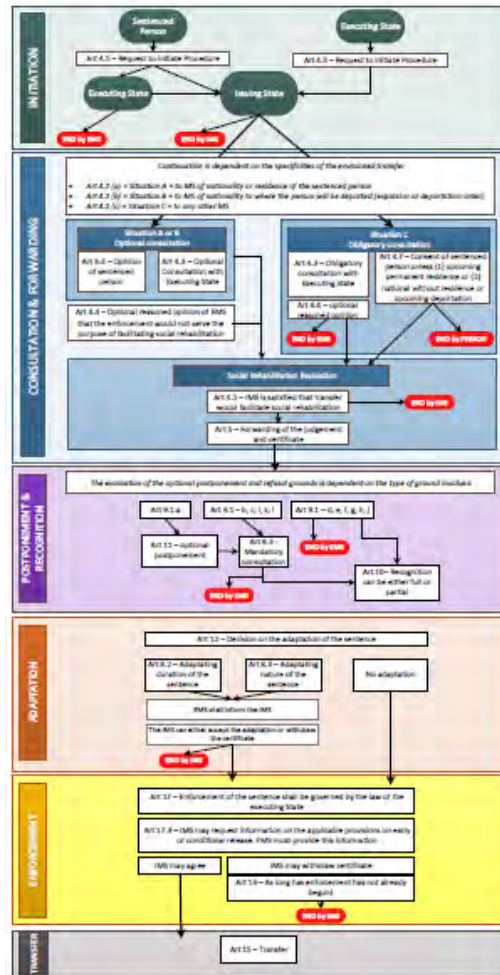
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Wendy.DeBondt@UGent.be

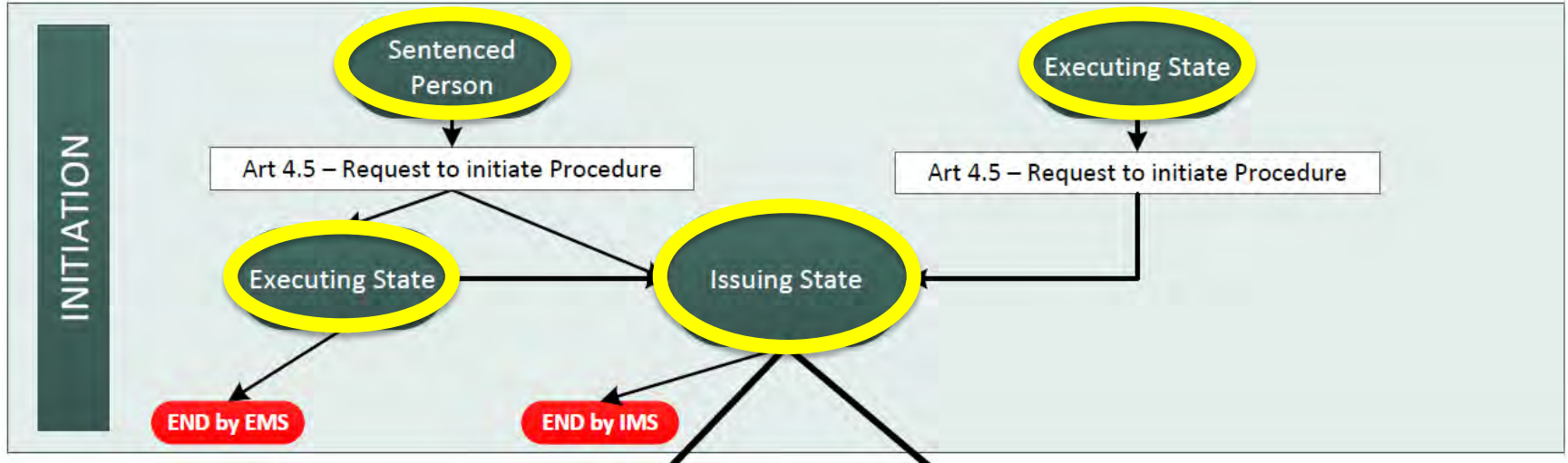
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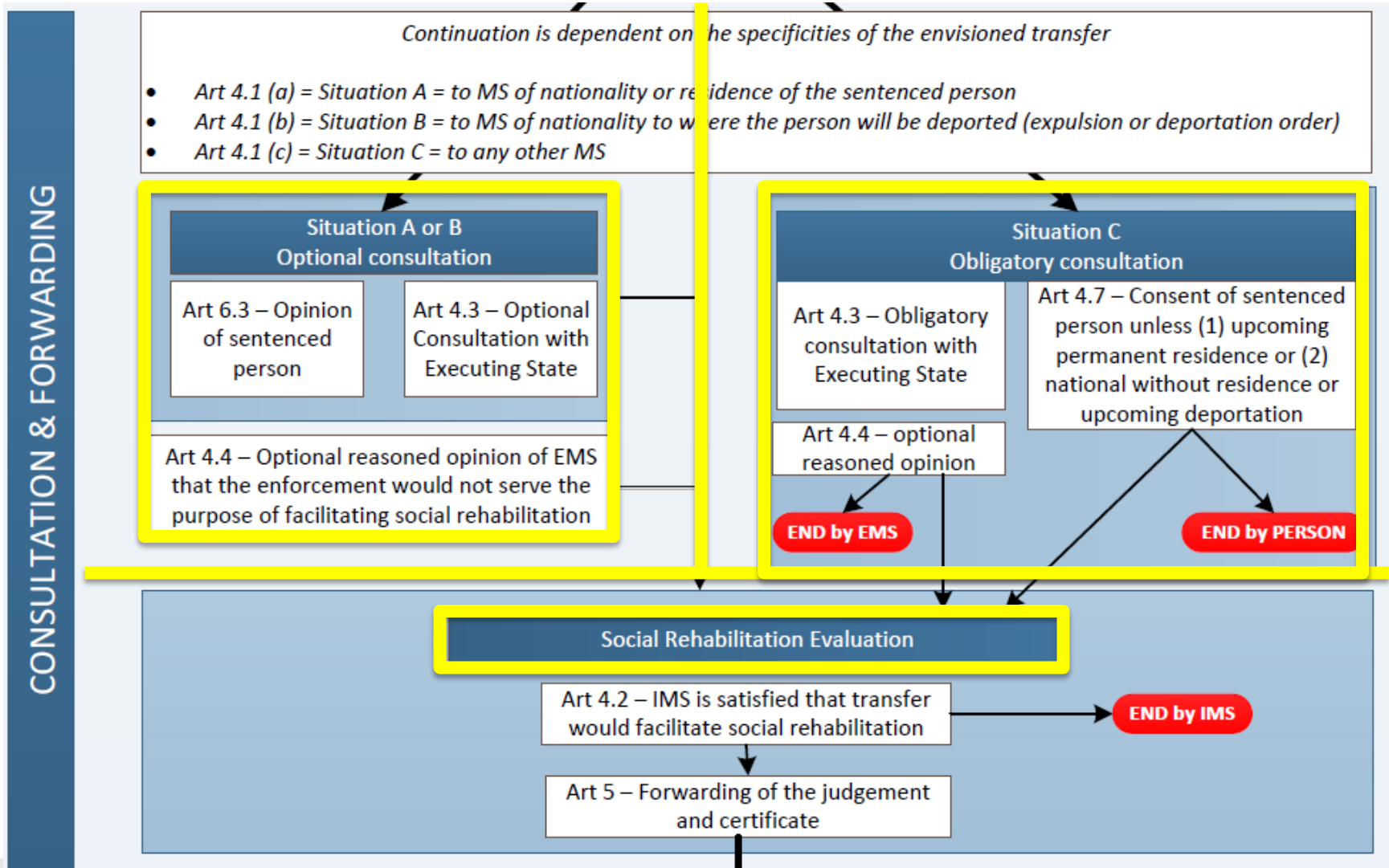
Context

Key Features

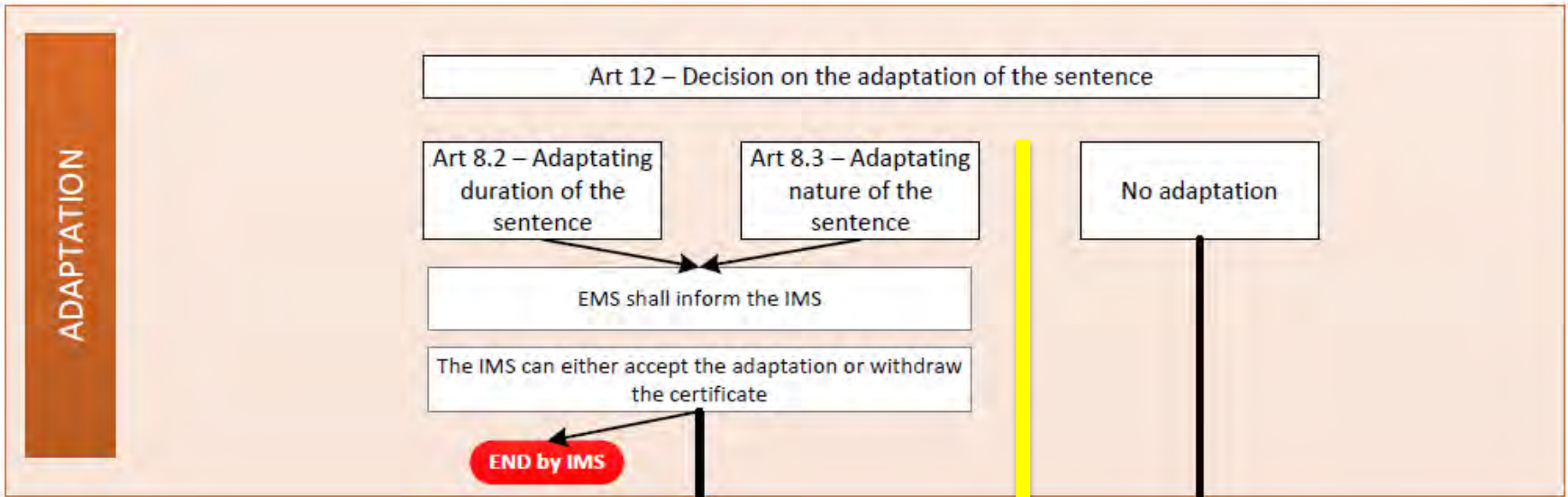
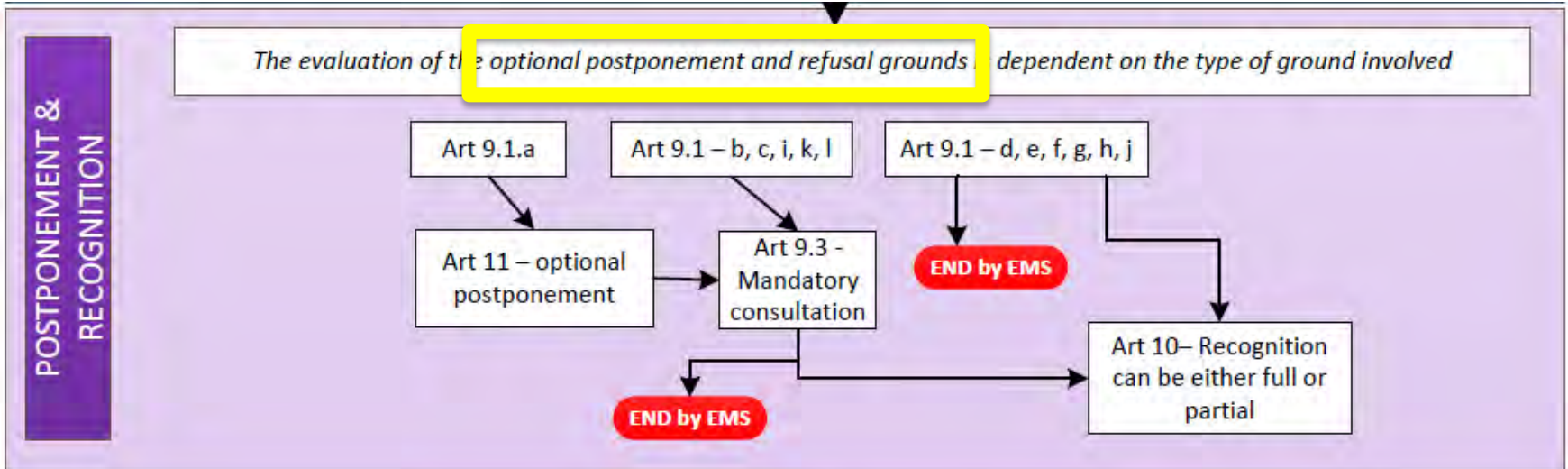
Flowchart

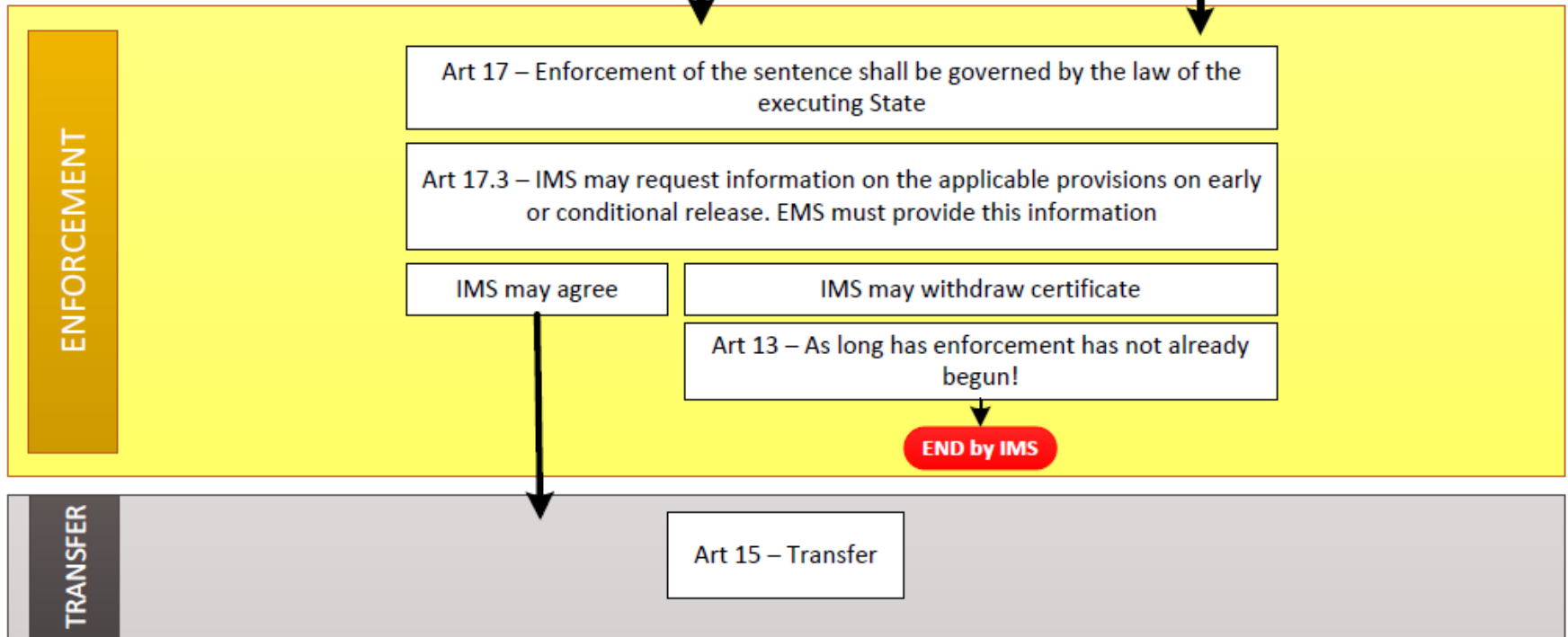






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Issuing

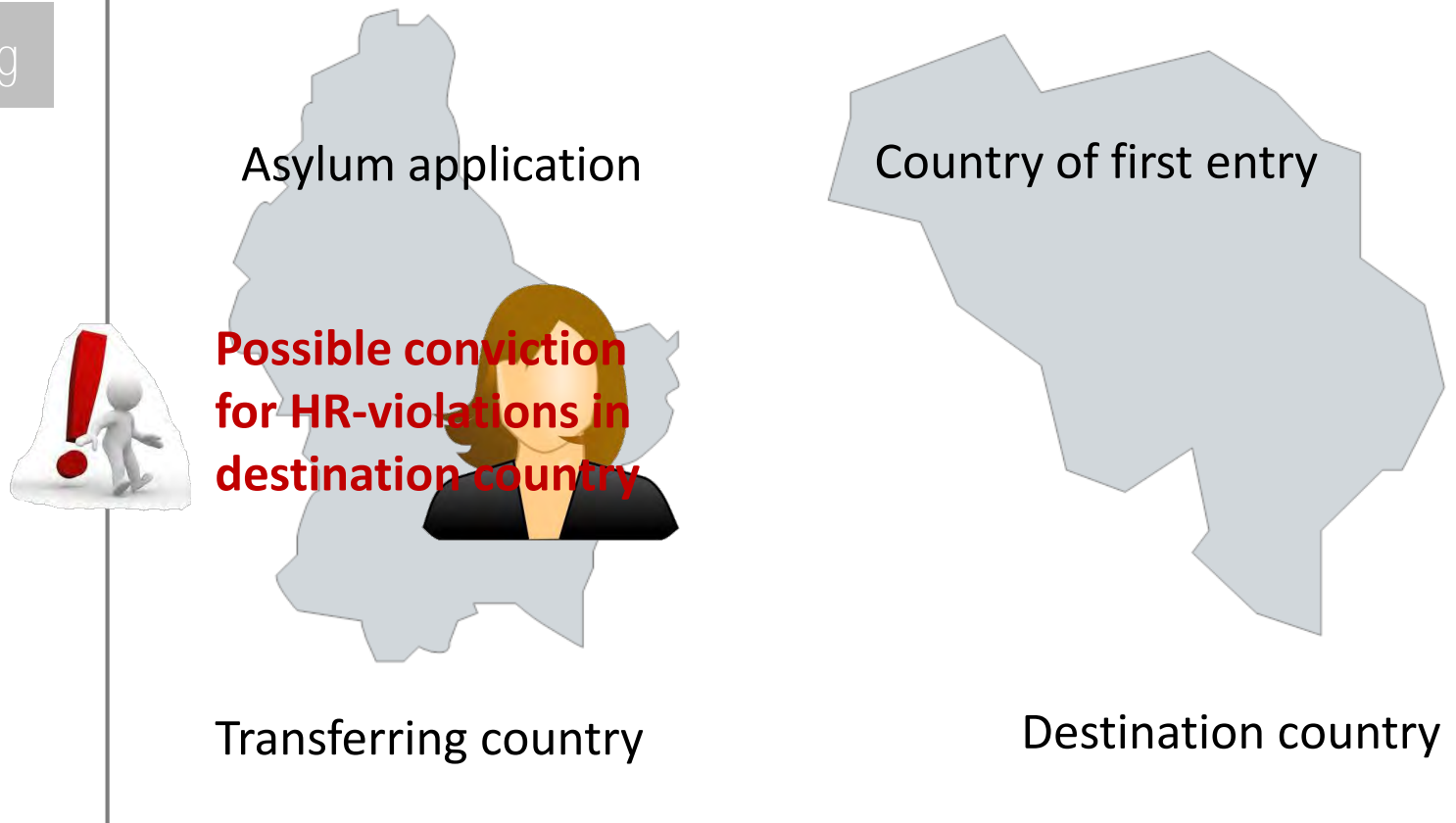
Executing

Social rehabilitation perspective

- Remainder of 6 months
- Consent of the sentenced person
- No common understanding of ‘social rehabilitation’
- Evaluation criteria
- Destination facility
- Conviction risks

Issuing

Executing

Asylum parallel | Dublin mechanism

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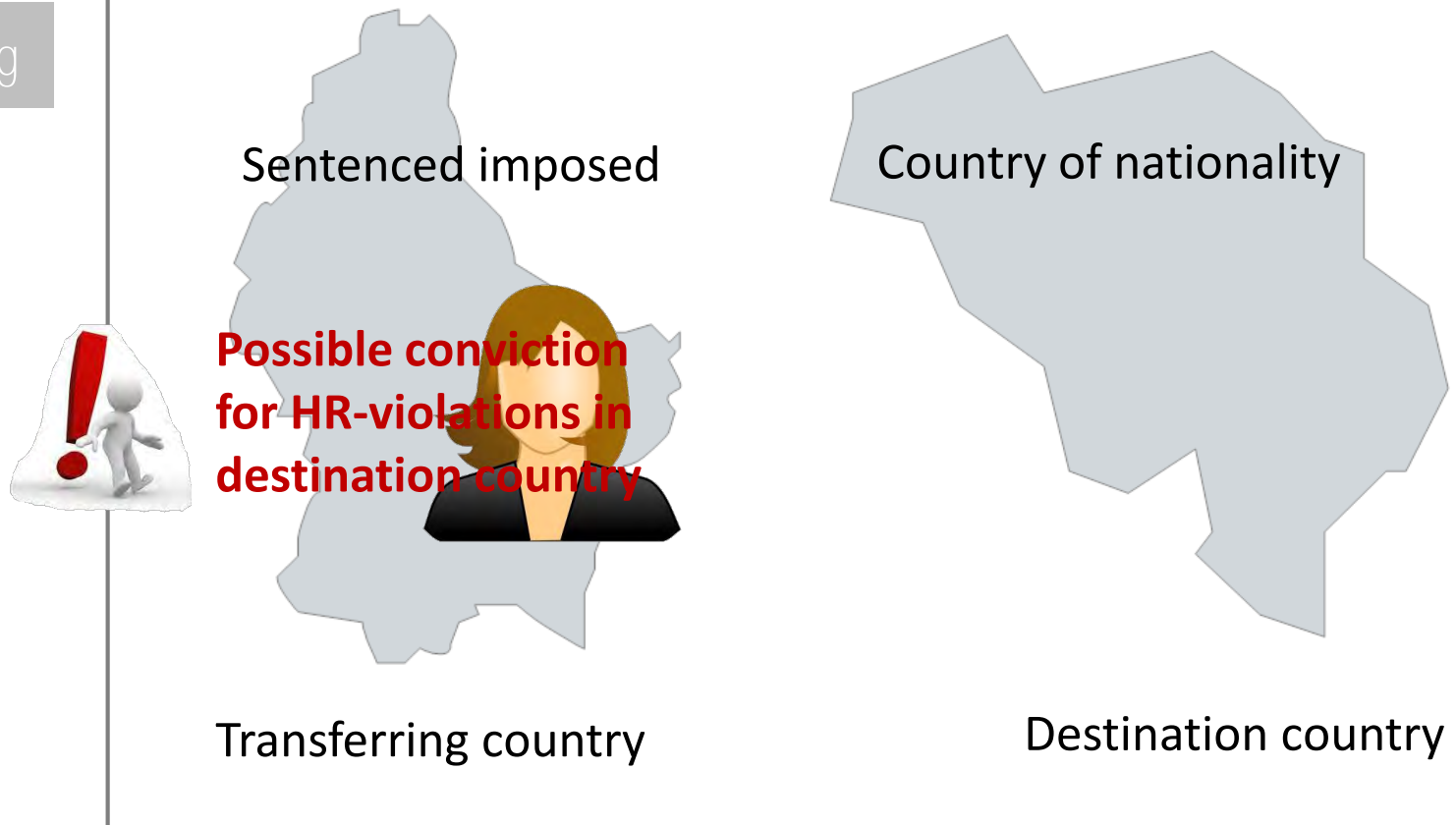
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Asylum parallel | Dublin mechanism



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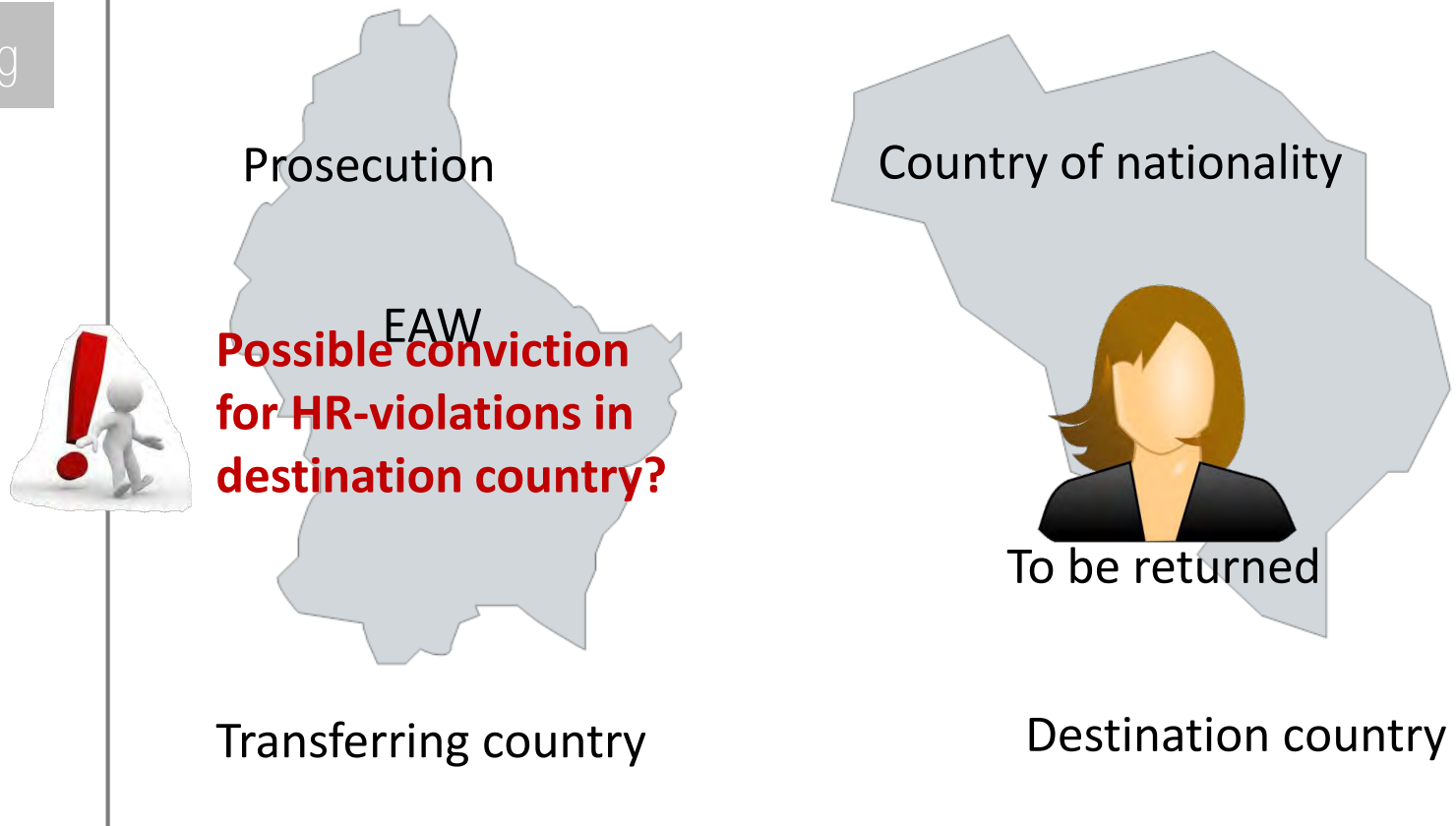
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Asylum parallel | Dublin mechanism



Issuing

Executing

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Executing

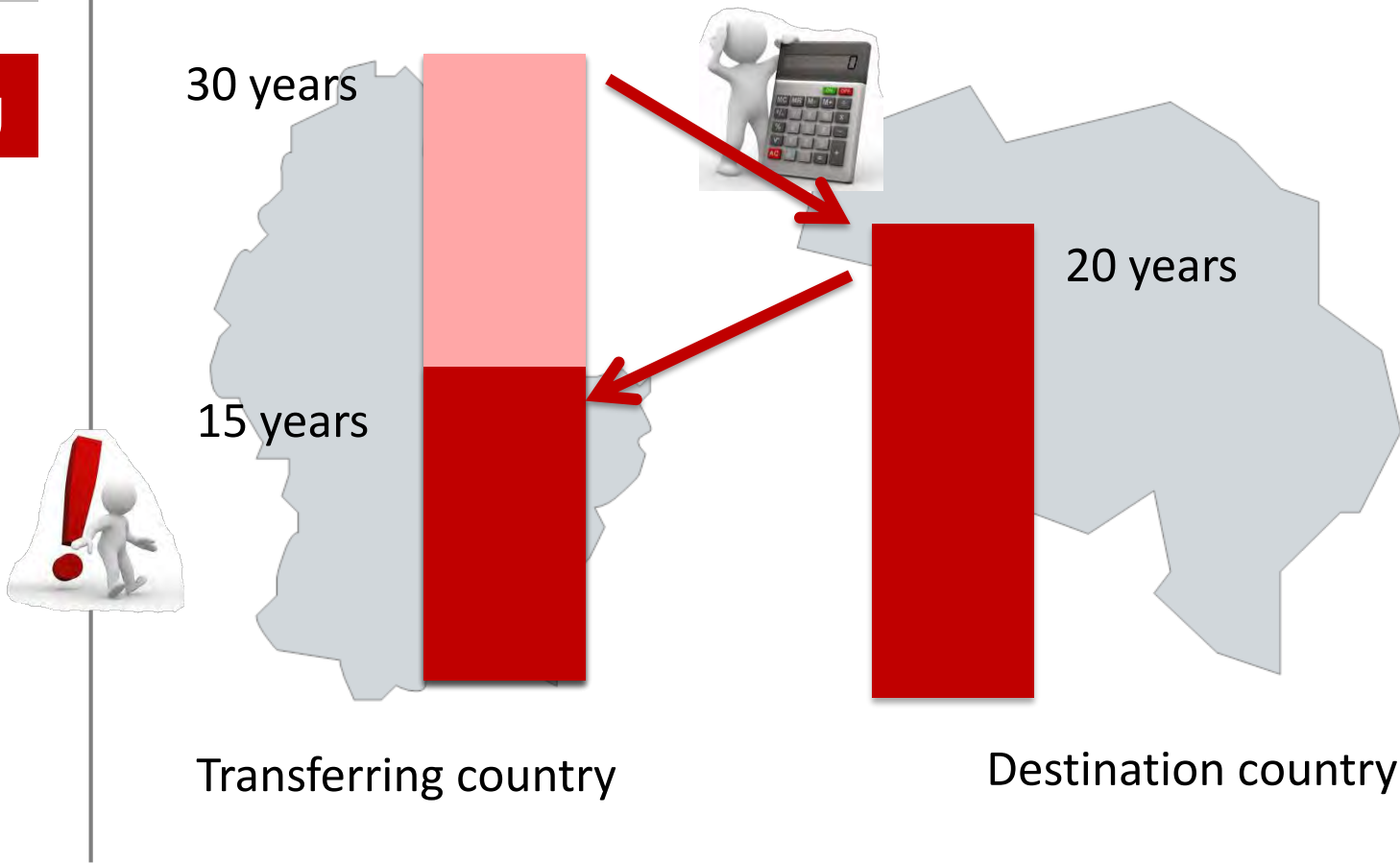
Aggravating effect of cooperation

- Sentence execution modalities
- Adaptation mechanism
- In abstracto vs In concreto maximum
- Different 'translations' of same foreign sentence

Issuing

Executing

Aggravating effect of cooperation



Issuing

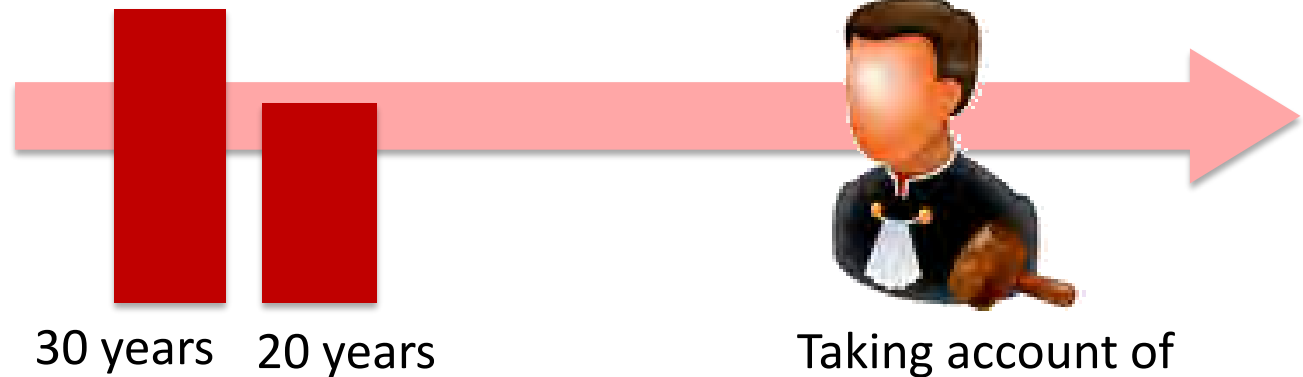
Executing

Aggravating effect of cooperation

- Sentence execution modalities
- Adaptation mechanism
- In abstracto vs In concreto maximum
- Different '**translations**' of same foreign sentence

Prior conviction

New proceeding

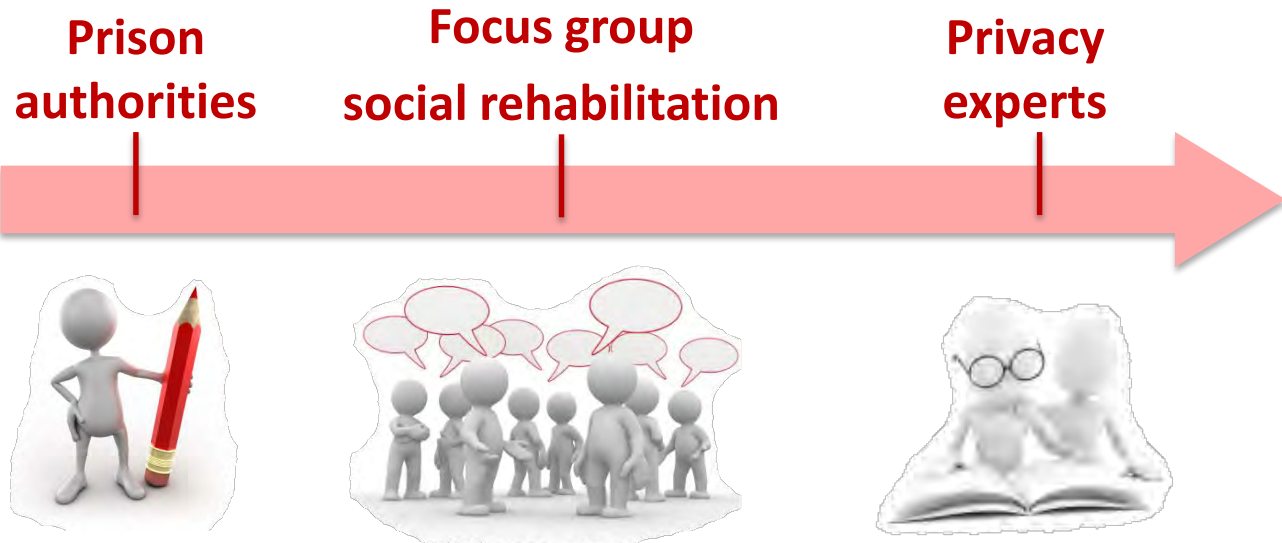


Issuing

Executing

Information need

- Security in facility
- Social rehabilitation of sentenced person



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EJN

Authorities

Language

Double
Criminality

Useful Links | Sitemap | FAQ | Registry | Contact EJN Secretariat | Legal Notice | English(en)

European Judicial Network (EJN) Réseau Judiciaire Européen (RJE)

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Info about national systems | EU Legal Instruments for Judicial Cooperation | Status of Implementation in the Member States of EU legal instruments | Cooperation with third countries and judicial networks

News | Events

05/08/2016 - General European Arrest Warrant: CJEU judgment I...
The Member State that issued a European ...

27/07/2016 - General Council Rotating EU Presidencies: Decis...
Council Rotating EU Presidencies: Decis...

Introduction to the EJN Website
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EJN Secretariat
EJN Meetings
Funding for EJN Meetings
Projects
Reports
EJN Contact Points area

SK EU2016
EU Presidency
Partners
EUROJUST
JITs network

Practical tools for judicial cooperation

Member states

AT	BE	BG
HR	CY	CZ
DK	EE	FI
FR	DE	GR
HU	IE	IT
LV	LT	LU
MT	NL	PL
PT	RO	SK
SI	ES	SE

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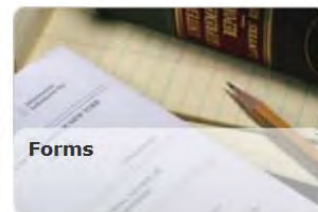
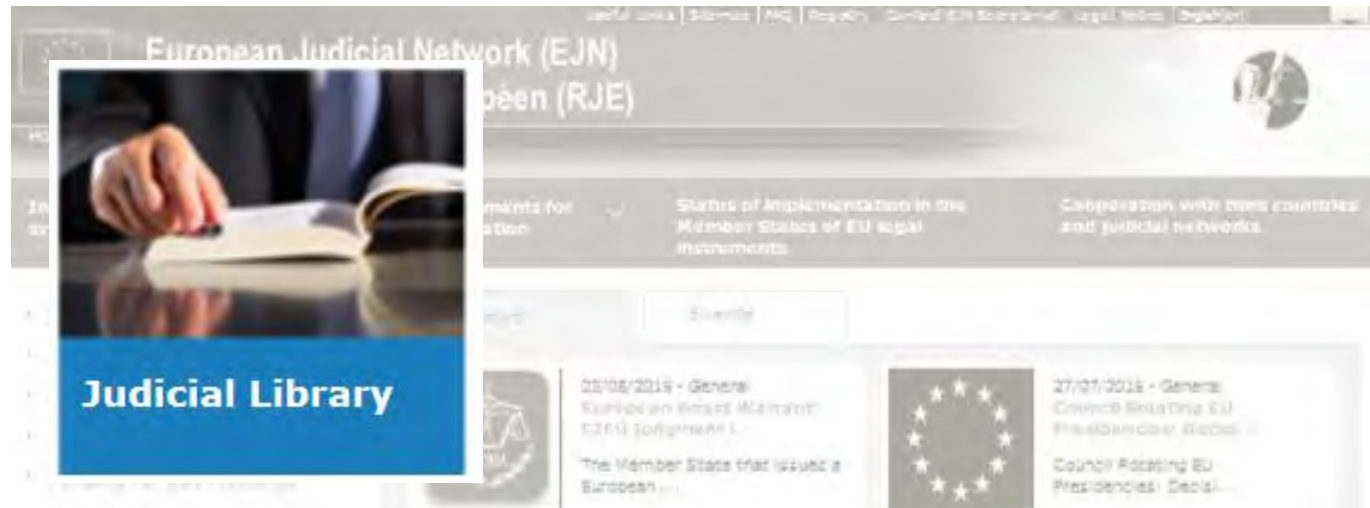
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Judicial Library

 Status of implementation of
[2008/909/JHA: Transfer of Prisoners of 27 November 2008](#)

 For the practical application of this Legal Instrument, check the [EJN Practical tools for judicial cooperation](#)

 Last reviewed on **20 October 2016** by EJN Secretariat

Country	Entry into force	Country Notification	Related National legislation	Additional Information
Austria	✓ 1 Jan 2012	Notification by Austria on the implementation of the Framework Decision on Transfer of prisoners	-	Complementary information provided by the Council Secretariat Complementary information: Declarations under Article 7(4) -double criminality- and Article 28(2) -transitional provision-
Belgium	✓ 18 Jun 2012	Notification by Belgium on the implementation of the Framework Decision on Transfer of prisoners	Law of 15 May 2012 concerning the application of the principle of mutual recognition to custodial sentences or measures imposed in a member state of the EU	Complementary information provided by the Council Secretariat Complementary information: Declarations under Article 7(4) -double criminality- and Article 28(2)

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Language

Double
Criminality

General implementation status

- OK (26): AT, BE, CZ, DK, DE, EE, EL, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, NL, PL, PT, RO, SL, SK, FI, SE, UK
- Ongoing (2): BG, IE

EJN

Authorities

Language

Double
Criminality

Forwarding certificate

- Ministry of Justice: BE, DK, EE, IT, NL, AT, RO, UK (E&W)
- Public Prosecutor: BE, DE, EL, FR
- Courts: CZ, DE, ES, HR, CY, LV, LT, MT, PL, SL SK
- criminal sanctions agency: FI
- prison and probation service: SE, UK (SC), UK (NI)

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EJN

Authorities

Language

Double
Criminality

Recognition and execution

- Ministry of Justice: EE, IT, NL, RO, UK(E&W)
- Public Prosecutor: BE, DK, EL FR, MT
- Courts: CZ, DK, ES, HR, CY, LV, LT, AT, PL, RO, SL, SK, FI
- prison and probation service: SE, UK (SC), UK (NI)

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Language

Double
Criminality

Accepting certificates in English

- Yes (10): BE, EE, HR, CY, MT, NL, SL, FI, SE, UK
- No: CZ, DK, DE, EL, FR, LV, LT, HU, AT, PL, RO, SK
- ?: BG, IT, LU, PT

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Authorities

Language

Double
Criminality

Used the possibility to reintroduce double criminality requirement for 32 offence list

- Yes (12) CZ, DE, FR, HR, IE, LT, HU, NL, AT, PL, RO, SL,
- No: BE, BU, DK, EE, EL, ES, IT, CY, LV, LU, MT, PT, SK, FI, SE, UK

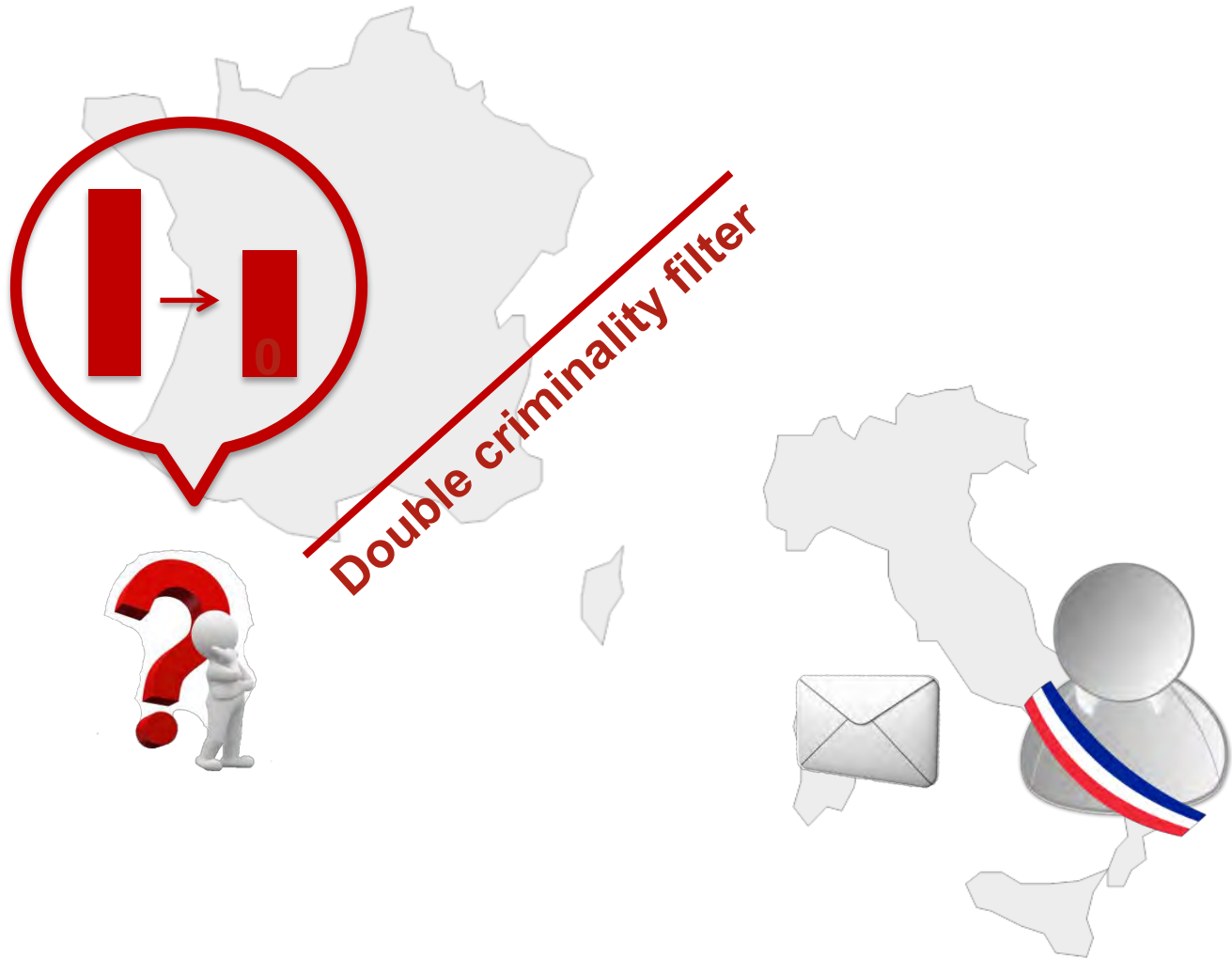
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Further reading



Forthcoming 2017

Transfer of prisoners in the EU.

Exchanging information to overcome security and social rehabilitation concerns

W. De Bondt & L. Quackelbeen

Questions and discussion



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Co-funded by the Justice Programme of the European Union 2014-2020

Council Framework Decision 2008/909/JHA

Workshop Correct Use and Application

Madrid 28 October 2016

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Workshop – the certificate

28 October 2016 | ERA | Madrid | Impact of detention on prisoners

CERTIFICATE

referred to in Art. 4 of Council Framework Decision 2008/909/JHA of 27 November 2008 on
the application of the principle of mutual recognition to judgments
in criminal matters imposing custodial sentences
or measures involving deprivation of liberty
for the purpose of their enforcement in the European Union¹

(a)	*	Issuing State:
	*	Executing State:

(b)	The court which delivered the judgment imposing the sentence that became final:
	Official name:
	The judgment was delivered on (give date: dd-mm-yyyy):
	The judgment became final on (give date: dd-mm-yyyy):

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Workshop – the certificate

(c) Information related to **the authority** that may be contacted for any question related to the certificate:

1. Type of authority: Please tick the relevant box:

Central authority

Court

Other authority

2. Contact details of the authority:

Official name:

.....

Address:

.....

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

BOX C – Would you check the competence of this authority?

Workshop – the certificate

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(d) Information regarding **the person or** whom the sentence has been imposed:

Name:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if available):

Date of birth:

Place of birth:

Last known addresses/residences:

Language(s) which the person understands (if known):

.....

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Additional information to be provided, if available and if appropriate:

1. Photo and fingerprints of the person, and/or contact details of the person to be contacted in order to obtain such information:
.....

2. Type and reference number of the
.....

3. Type and reference number of the ser
.....

4. Other relevant information about the
ties to the executing State:
.....
.....

BOX D – What information would be relevant in light of execution?

Workshop – the certificate

(f) Relation to any earlier **European Arrest Warrant** (EAW):

- An EAW has been issued for the purpose of the execution of a custodial sentence or detention order and the executing Member State undertakes to execute the sentence or detention order (Article 4(6) of the EAW Framework Decision).

Date of issue of the EAW and, if available, reference number:

.....

Name of the authority that issued the EAW:

Date of decision to undertake execution and, if available, reference number:

.....

Name of the authority that issued the decision to undertake execution of the sentence:

.....

- An EAW has been issued for the purpose of prosecution of a person who is a national or resident of the executing State and the executing State has surrendered the person under the condition that **the person is to be returned to** the executing State in order to serve there the custodial sentence or detention order passed against him or her in the issuing Member State (Article 5(3) of the EAW Framework Decision).

Workshop – the certificate

(g) Reasons for forwarding the judgment and the certificate (if you have filled in box (f), there is no need to fill in this box):

The judgment and the certificate are forwarded to the executing State because the issuing authority is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person and:

- (a) The executing State is the State in which the sentenced person in fact lives.
- (b) The executing State is the State in which the sentenced person will be deported, on the basis of an expulsion or administrative decision of expulsion or deportation by the authority that issued the judgment and the certificate, and the authority that issued the judgment and the certificate is satisfied that the sentenced person will retain a permanent right of residence in that State.
- (c) The executing State is a State, other than a State referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that State.
- (d) The executing State has given a notification under Article 4(7) of the Framework Decision, and:
 - it is confirmed that, to the knowledge of the competent authority of the issuing State, the sentenced person lives and has been legally residing continuously for at least five years in the executing State and will retain a permanent right of residence in that state, or
 - it is confirmed that the sentenced person is a national of the executing State.

CASE 1 - GERMAINE

- German national
- Italian residence
- Human Smuggling
- EAW Art 5 (3)



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(h) Judgment imposing **the sentence:**

1. The judgment covers offences in total.

Summary of facts and a description of the circumstances in which the offence(s) was (were) committed, including time and place; and the nature of the involvement of the sentenced person:

.....

Nature and legal classification of the offence(s) and the applicable statutory provisions on the basis of which the judgment was made:

.....

2. To the extent that the offence(s) identified under point (h) 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State, which are punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years, please confirm by ticking the relevant box(es):

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;

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- forgery of administrative documents and trafficking therein;
- forgery of means of payment;
- illicit trafficking in hormonal substances and other growth promoters;
- illicit trafficking in nuclear or radioactive materials;
- trafficking in stolen vehicles;
- rape;
- arson;
- crimes within the jurisdiction of the International Criminal Court;
- unlawful seizure of aircraft;
- sabotage.

CASE 2 - FRANÇOISE

- French national
- Doctor - Euthanasia
- Double Criminality
- Acceptability



3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and the certificate is forwarded to the Member State, which has declared that it will verify the double criminality (Article 7(4) of the Framework Decision), please give a full description of the offence(s) concerned:

.....

.....

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(i) Status of the judgment imposing the sentence:

1. Indicate if the judgement was rendered in absentia:
 - No, it was not.
 - Yes, it was; it is confirmed that:
 - the person was informed in person, or via a representative competent according to the national law of the issuing State, of the time and place of the proceedings which led to the judgment in absentia or
 - the person has indicated to a competent authority that he/she does not contest the decision.

2. Details of the length of the sentence :
 - 2.1. Total length of the sentence (in days):
 - 2.2. The full period of deprivation of liberty already served in connection with the sentence in respect of which the judgment was issued (in days):

..... as per (...) (give date on which calculation was made: dd-mm-yyyy):
 - 2.3. Number of days to be deducted from total length of the sentence for reasons other than the one referred to under 2.2 (e.g. amnesties, pardons or clemencies, etc. already granted with respect to the sentence):, as per (give date on which calculation was made: dd-mm-yyyy):

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3. Type of sentence:

- custodial sentence
- measure involving deprivation of liberty (please specify):

.....

(j) Information related to **early or conditional release:**

1. Under the law of the issuing State the sentenced person is entitled to early or conditional release, having served:
 - half the sentence
 - two-thirds of the sentence
 - another portion of the sentence (please indicate):
2. The competent authority of the issuing State requests to be informed of:
 - The applicable provisions of the law of the executing State on early or conditional release of the sentenced person;
 - The beginning and the end of the period of early or conditional release.

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(k) **Opinion of the sentenced person:**

1. The sentenced person could not be heard because he/she is already in the executing State.

2. The sentenced person is in the issuing State and:

a. has requested the forwarding of the judgment and the certificate

consented to the forwarding of the judgment and the certificate

did not consent to the forwarding of the judgment and the certificate
 reasons given:

CASE 3 - ESTELLE

- Estonian national
- Political mandate
- Hate speech
- Release provisions

b. Opinion of the sentenced person is attached.

Opinion of the sentenced person was forwarded to the executing State on
 (give date: dd-mm-yyyy):

(l) Other circumstances relevant to the case (optional information):



Questions and discussion



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Experiencing transfer under FD 909/2008.

Expectations and early experiences



Co-funded by the Justice Programme of the European Union 2014-2020

Ioan Durnescu
ERA, Madrid, 2016

What works in prison management?

MPQL – Alison Liebling:

- humanity
 - staff professionalism
 - help and assistance
 - bureaucratic legitimacy
-
- Consistent with literature on legitimacy and compliance well-being and good governance.
 - High well-being, lower suicide rates, order and lower reconviction rates

Research on prisoner's expectations

- Q – How prisoners perceive the opportunities provided by the FD 909/2008?
- 133 prisoners held in Italy (n=11) and Spain (n=122)
- opportunity sample
- Questionnaires (n=88) and Interviews (n=41)
- SPSS – thematic analysis

Demographics

- Spain
 - Male
 - Between 22-40
 - Sentenced for theft and robbery

Motivation for selecting these countries

- The most popular destination for the Romanian economic migration:
- 2014 – legal migration:
 - 1 mil. In Italy
 - 798,513 citizens in Spain

 - 2,886 Romanian prisoners in Italy
 - 1,849 Romanian prisoners in Spain

Findings

I. **Knowledge** about the FD

- Italy – informed about the FD by staff
- Spain – informed about the FD – half by other inmates and half by staff
- Inexact or wrong information about the procedure
- Did not know about the compulsory transfer

Findings

II. Engagement

- 41% of the Romanian in Spain would be interested
 - reasons: close to family, more attention in prison (work, prison leaves)
 - if released sooner even if the family is in Spain:

'Researcher: If the family is still in Spain would you like to transfer to Romania?

Participant: It does not matter if the family is here [in Spain]. They could move to Romania with me or they could just send me money.

R: Do you think the family will follow you in Romania?

P: Evidently. If I come out to freedom sooner ...'

Findings

Demotivating factors:

- The length of time for the procedure
- The uncertainty of the length and the outcome (like in Warr, 2015)
- If close to the end of the sentence – release grant in Spain (6-18 months, 426 Euro in 2015)
- Faster release in Italy after Law decree no. 146/2013

Findings

III. Recommendations

- for those with long sentences, with families in Romania and only at the beginning of the sentence:

'if we start receiving privileges in Italy we are not interested in being transferred'

Case study

- VN was transferred from Spain where he was sentenced for organized crime for 18 years. He was in the respect module and had responsibilities in the prison for which he was paid. After serving 9 years in Spain he decided to be transferred to Romania to be close to his wife and child and get released sooner.
- Transfer procedure – confusing and very long (8 months)
- His wife abandoned him meanwhile
- In Romania he was classified in a closed prison – as if he is at the beginning of the sentence – not many activities !!!
- The closest close prison is 200 Km away from where his mum lives – social isolation
- His prison file contained only the court decision approving the transfer – his progress in Spain was not considered.
- The conditional release prospects are not clear – credits, semi-open and open regime etc.

Conclusions

- In 2014 – FD infancy
- Opportunity sample
- Procedure still unclear, unpredictable and very long for the prisoners
- Prisoners have a limited understanding of the juridical terms – suspicious
- Prisoners interested to transfer if the release prospects are better in the ES
- Better perceived if it takes place at the beginning of the sentence and involves those with families in Romania
- Better received among those willing to transfer
- Progress in one prison system is still not taken into account in another

Some solutions

- **More transparency, legitimacy and humanity.**
- **Start** with those prisoners:
 - willing to transfer
 - at the beginning of the sentence and
 - with families in the ES
 - With better social reintegration prospects in ES.
- **Inform** all foreign prisoners about the opportunity and the procedure (brochure in the national language)
- Make the **internal procedure** as simple and fast as possible
- On a long run, make the **conditional release conditions** as close as possible
- Increase the **cooperation** between prison administrations so that progress in one system is taken into account in another – assessment, programs, health issues etc.



Thanks !!

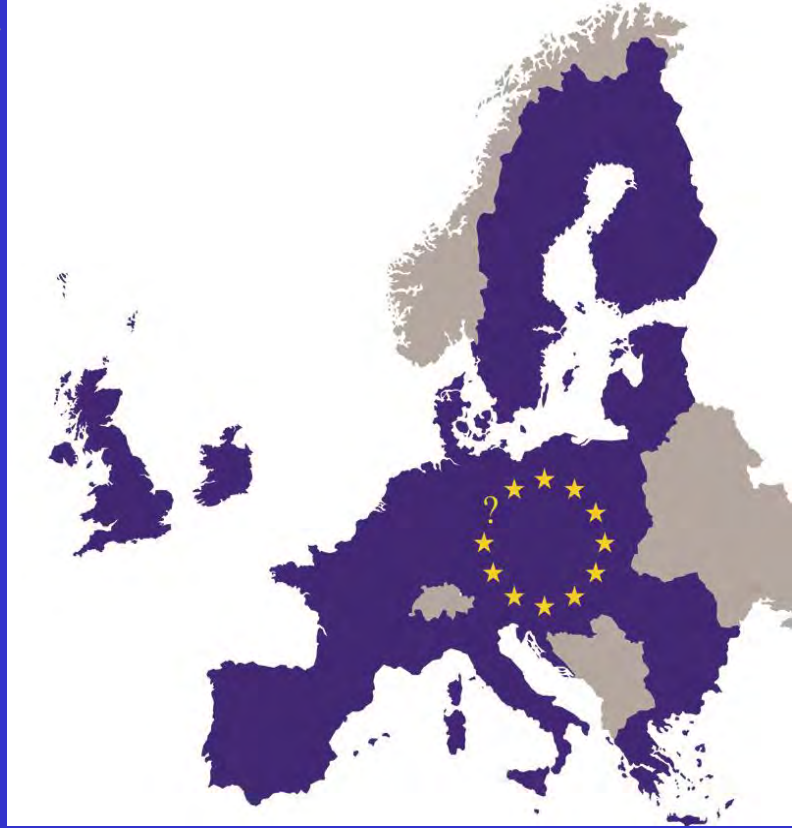
idurnescu@gmail.com

loan.durnescu@sas.unibuc.ro

Decisión Marco 2008/909/JAI sobre traslado de personas condenadas. Una perspectiva judicial.

FLORENTINO-GREGORIO RUIZ YAMUZA. Magistrado, España.

Madrid, 27-28 octubre 2016.



Co-funded by the Justice Programme of the European Union 2014-2020



Traslado de personas condenadas. Diferentes aproximaciones.

- Política
- Sistema penitenciario
- Policía
- Social y humanitaria
- Criminología
- Judicial

Situación actual. Instrumentos supranacionales.

Convenio Europeo, Estrasburgo 21.03.1983,

Iniciativas de Naciones Unidas (1)

Tratados bilaterales.

DM 2008/909/JAI. Implementación (2)

DM 2008/909/JAI. Características.

I Instrumento de reconocimiento mutuo.

Formulario único

Contacto directo autoridades judiciales

Estrictos límites temporeales

Supresión doble tipificación

Causas de denegación limitadas (3)

Entrega de nacionales

? *Factor* → áreas problemáticas , impacto de la
Jurisprudencia

II Requisitos del traslado (4)

1. Rehabilitación social

- Noción de rehabilitación social
- Valorar el favorecimiento de la RS

2. Consentimiento

- Consentimiento/opinión del Estado miembro de Ejecución
- Consentimiento/opinión de la persona condenada

3. Derechos Humanos

III Aspectos técnicos

1. Comienzo del proceso
2. Límites temporales
3. Flujos de información

Autoridades → persona condenada

Autoridades EEm y EEj. Protocolo (5)

Autoridades nacionales

4. Ejecución

Ley que rige la ejecución

Adaptación de la sentencia *

Período transicional

Lenguaje y costes

Establecer la identidad de la persona condenada

Aplicación simultánea de las DM 909, 947 y OED.

Paquete legislativo complementario

Art. 25 DM 909

Relaciones entre DM 947 and DM 909

Residencia, rehabilitación social, motivos de rechazo, consentimiento

Relaciones entre DM 909 and DM OED

Arts. 4.6 y 5.3 DM OED

Nacionalidad, rehabilitación social, consentimiento

Jurisprudencia TJUE (6)

Poplawski, *Art. 4.6 DM OED*

Aranyosi/Caldararu, *Derechos Humanos+ JZ, privación de libertad*

Vam Vemde, *aplicación temporal*

Grundza, *consideración del delito*

Ognyanov, *deducción del tiempo cumplido+*

Spasic, *ne bis in idem*

López da Silva, *nacionales*

Wolzenburg, *residencia*



Co-funded by the Justice Programme of the European Union 2014-2020

LEY 23/2014 DE 20 DE NOVIEMBRE

RECONOCIMIENTO Y EJECUCION EN ESPAÑA DE
UNA RESOLUCION POR LA QUE SE IMPONE UNA PENA
O MEDIDA PRIVATIVA DEL LIBERTAD

CARMEN MONFORT MARCH
FISCAL DE LA AUDIENCIA NACIONAL

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1)INTRODUCCION

1.1. LEGISLACION:LEY DE 23 /2014 DE 20 DE NOVIEMBRE

El procedimiento para el reconocimiento y ejecución en España de las sentencias condenatorias firmes dictadas por los países de la Unión Europea, se regula en los artículos 77 y ss de la Ley 23/2014 de 20 de noviembre, BOE n 282 de 21 de noviembre de 2.014 (en adelante LRM), en vigor desde el 11 de diciembre de 2014.

Dicho texto legislativo, con la finalidad de evitar la dispersión normativa, se presenta como un texto conjunto en el que se reúnen todas las Decisiones Marco y directivas relativas al reconocimiento mutuo de resoluciones penales.

La nueva Ley simplifica el marco normativo anterior contenido en diversos Convenios, tales como Convenio europeo sobre traslado de personas condenadas de 21 de marzo de 1.983 y su Protocolo Adicional de 18 de diciembre de 1.997, quedando vigente el procedimiento respecto a los países no miembros de la Unión europea, o que no hayan transpuesto la Decisión Marco 2008/909/JAI. La nueva norma afecta también al Convenio europeo sobre la validez internacional de las sentencias penales de 28 de mayo de 1.970; Título III, capítulo 5, del Convenio de aplicación de 19 de junio de 1990 del Acuerdo de Schengen de 14 de junio de 1985 relativo a la supresión gradual de los controles en las fronteras comunes y el Convenio entre los Estados miembros de las Comunidades Europeas sobre la ejecución de condenas penales extranjeras de 13 de noviembre de 1991, regulándose la materia en un cuerpo normativo.

1.2. El principio de reconocimiento mutuo de resoluciones penales regulado en la citada ley, implica que las autoridades judiciales españolas (art. 1 LRM):

-Transmitirán a otro Estado miembro los instrumentos de reconocimiento mutuo que dicten para éstos los reconozcan y los ejecuten.

-Reconocerán y ejecutarán en España dentro del plazo previsto, los instrumentos que hayan sido transmitidos correctamente por la autoridad competente de otro Estado miembro y no concurra ningún motivo tasado de denegación.

1.3. Dos principios inspiran dicha normativa:

a) la eliminación de cualquier intervención decisoria por parte del poder ejecutivo, limitándose el Ministerio de Justicia a recibir tanto copia de los certificados transmitidos o reconocidos en España que le son remitidos la autoridad judicial competente, como el listado de los instrumentos de reconocimiento mutuo emitidos o ejecutados por los representantes del Ministerio Público, remitidos semestralmente por la Fiscalía General del Estado.

La ley atribuye al Ministerio de Justicia el papel de Autoridad Central, a la que corresponde la función de auxiliar a las autoridades judiciales competentes para acordar las resoluciones reguladas en dicho texto legal (artículo 6.3 LRM)

b) el principio de reinserción social del condenado, principio reconocido y reiterado tanto la Decisión Marco 2008/909/JAI citada, en el artículo 77 de la LRM y en el artículo 25-2 de la Constitución Española al establecer que “las penas privativas de libertad y las medidas de seguridad están orientadas hacia la **educación y reinserción social**”

2) ORGANOS JUDICIALES COMPETENTES EN ESPAÑA:

2.1. JUZGADO CENTRAL DE LO PENAL DE LA AUDIENCIA NACIONAL. Para conocer del procedimiento en el que se decide sobre el reconocimiento y ejecución en España de la Sentencia condenatoria dictada por los Tribunales de Justicia de la Unión Europea, la competencia corresponde, de forma exclusiva, al Juzgado Central de lo Penal de la Audiencia Nacional.

En el caso de que el Tribunal Sentenciador remita la solicitud a otro órgano judicial español incompetente, éste viene obligado a reenviar la petición directamente al Juzgado Central de lo Penal, comunicándolo tanto al Fiscal como a la autoridad de emisión (artículo 16.2 de LRM).

2.2. JUZGADO DE VIGILANCIA PENITENCIARIA. Si el Juzgado Central de lo Penal acordase el reconocimiento y ejecución en España de la pena impuesta por un Tribunal de la Unión Europea, cesa su competencia, transmitiendo su resolución al Juzgado de Vigilancia Penitenciaria, que será el encargado de llevar a cabo la ejecución, en los mismos términos que si se tratase de una sentencia dictada por Tribunales Españoles.

2.3. JUZGADO CENTRAL DE MENORES. Si bien es cierto que el capítulo III de la LRM, siempre se refiere al Juzgado Central de lo Penal, no debe olvidarse, que cuando la resolución a ejecutar se refiera a una medida de internamiento en régimen cerrado de un menor de edad penal, la LRM en su artículo 64.2 al atribuye expresamente la competencia al Juzgado Central de Menores.

3) EL PROCEDIMIENTO

3.1. EL OBJETO del procedimiento es el reconocimiento o denegación de la ejecución en España de las sentencias condenatorias impuestas por Tribunales de la Unión Europea imponiendo penas privativas de libertad.

Se exige que la resolución condenatoria haya adquirido firmeza, que la pena se encuentre total o parcialmente pendiente de ejecución y que en este último caso, la pena que quede por cumplir no sea inferior a 6 meses.

3.2. EL PROCEDIMIENTO PUEDE INICIARSE:

- a petición de la persona condenada
- a iniciativa del Ministerio Fiscal.
- a petición del Tribunal de la Unión Europea que dictó la sentencia condenatoria, si el penado es nacional español o reside de forma permanente en España.
- de oficio por el Juzgado Central de lo Penal.

Si el procedimiento se inicia a instancias de la persona condenada, ésta puede efectuar la solicitud, tanto ante las Autoridades Judiciales españolas, si reside habitualmente en España, como ante las del Estado de ejecución.

Si la solicitud ha sido formulada por el el Tribunal sentenciador, éste puede dirigirse al Juzgado Central de lo Penal, para solicitar su opinión sobre la posibilidad de lograr la reinserción social del condenado, en caso de cumplir en España la pena impuesta (artículo 78 LRM). En este supuesto, el órgano judicial español oirá al condenado, si se encuentra en España, recabará información a través de los servicios sociales o agentes de la autoridad sobre la residencia y los vínculos que el condenado tiene en nuestro país, solicitará informe al Ministerio Fiscal y remitirá su respuesta a las autoridades que han realizado la consulta.

El procedimiento se inicia de oficio por el Juzgado Central de lo Penal, mayoritariamente, en aquellos supuestos en los que el condenado es detenido en España en virtud de una orden europea de detención y entrega emitida por las autoridades judiciales del país que dictó la sentencia. En estos casos, la competencia para la acordar o denegar la entrega, corresponde a los Juzgados Centrales de Instrucción de la Audiencia Nacional. En aquellos supuestos en los que la persona reclamada sea de nacionalidad española o resida en España y acredite vínculos familiares, laborales ó de otra índole en nuestro país, los Juzgados Centrales de Instrucción pueden denegar la entrega, pero con el fin de impedir la impunidad del condenado, transmiten su resolución denegatoria al Juzgado Central de lo Penal a efectos de incoar el procedimiento, regulado en los artículos 77 y ss de la ley, comunicándolo a las autoridades del país requirente.

3.3. DOCUMENTACION PRECEPTIVA. El certificado y la sentencia condenatoria.

Iniciado el procedimiento, el Tribunal sentenciador debe remitir a la autoridad judicial española, tanto el certificado debidamente cumplimentado y firmado por la autoridad judicial competente, como testimonio íntegro de la sentencia condenatoria.

La remisión puede llevarse a cabo por correo certificado, por medios informáticos o telemáticos, siempre que los documentos estén firmados electrónicamente o vía fax si a continuación se remite el original (artículo 18LRM)

Necesariamente el certificado debe traducirse al español, salvo que convenios bilaterales permitan la remisión en la lengua del país que impuso la condena (así ocurre con Portugal, en base el convenio firmado entre dicho Estado y España) (artículo 7 de la LRM). En caso contrario, será devuelto a la autoridad judicial del Estado de emisión que lo hubiese firmado, para que lleve a cabo la correspondiente traducción (artículo 17 de la LRM)

También se procederá a su devolución en los casos en los que se insuficiente o defectuoso, a fin de que se modifique o complete, lo que aplazará el reconocimiento de la resolución (artículo 84 de LRM)

Sin embargo, no ocurre lo mismo con la sentencia condenatoria, que sólo será objeto de traducción, cuando así lo requiera el Juzgado Central de lo Penal.

3.4. REQUISITOS.

3.4.1 Doble tipificación. Para acordar el reconocimiento y ejecución en España de la condena dictada por otro país de la Unión Europea, no es necesario el control de la doble tipificación cuando se refiere a delitos apartados 1 artículo 20 de la propia ley (a título de ejemplo, pertenencia a organización delictiva, terrorismo, trata de seres humanos, explotación sexual de menores y pornografía infantil, tráfico ilícito de drogas, estupefacientes armas o explosivos, corrupción, fraudes, blanqueo de capitales, falsificaciones, homicidios lesiones graves violación etc.) castigados con pena privativa de libertad cuya duración máxima sea de al menos tres años.

3.4.2 Nacionalidad y residencia en España. El legislador exige la concurrencia de los siguientes requisitos, contemplados en el artículo 77 de la LRM:

- a) que el condenado sea español y resida en nuestro país.
- b) Que el condenado sea español y vaya a ser expulsado a España con motivo de esa condena.

c) Aún cuando no se den esas condiciones, si el Juez Central de lo Penal ha consentido la ejecución de la sentencia en España.

Como se acaba de exponer, el artículo 77 de la citada LRM, cuando se refiere al reconocimiento y ejecución de sentencias que imponen una pena privativa de libertad, sólo cita expresamente al condenado de nacionalidad española y residente en España, obviando toda referencia a los residentes legales y habituales en nuestro país que ostentan otra nacionalidad, equiparación que tampoco se establece en otros artículos de la Ley.

Así, en el artículo 81 cuando regula los supuestos en los que no se necesita el consentimiento del reclamado, refiriéndose sólo al nacional español y residente en España.

En el ya citado artículo 91 de la LRM, cuando establece que el Juzgado Central de Instrucción remitirá el procedimiento al Juzgado Central de lo Penal tras denegar la entrega en una Orden Europea de Detención y Entrega, se establece como condición que el reclamado tenga la nacionalidad española, pero no se refiere tampoco al residente en España que sea nacional de otro país de la Unión Europea.

Sólo en el artículo 93 y ss de la LRM, en los que se regula el procedimiento para el reconocimiento y ejecución de las resoluciones en las que se impone una pena sustitutiva de otra privativa de libertad, exige (artículo 101 de la LRM) que el sujeto tenga residencia legal y habitual en España ó que en su defecto que la tengan por un mínimo de 5 años, sus ascendientes, descendientes, hermanos, cónyuge o persona con la que mantenga una relación afín.

Sin embargo como no podía ser de otro modo, la equiparación se ha establecido en la práctica, porque tanto en la DM 2002/584 y la de 2008/909 como en la ley, al referirse a los distintos instrumentos de reconocimiento mutuo, se hacen continuas referencias y equiparaciones entre condenado que ostenta la nacionalidad española y el que habite o resida en España.

El citado artículo 101 de la LRM, es una reproducción de lo recogido en la letra a) del número 7 del artículo 4 de la DM 2008/909, que cuando regula los supuestos en los que no se exige consentimiento previo del condenado, se refiere tanto al condenado tenga la nacionalidad del Estado de ejecución como al condenado que viva y haya estado residiendo legalmente de forma

continuada al menos durante cinco años en el Estado de ejecución y vaya a mantener un derecho de residencia permanente en dicho Estado.

Los principales problemas a efectos prácticos se plantearon inicialmente al determinar qué condiciones debían exigirse al condenado residente en España que ostentase otra nacionalidad, a efectos de autorizar el cumplimiento de la condena en nuestro país.

En el ya referenciado número 7 del artículo 4 de la DM 2008/909 se establece que “se entenderá por «derecho de residencia permanente» el que la persona de que se trate, tenga un derecho de residencia permanente en el respectivo Estado miembro de conformidad con la legislación nacional de aplicación de la legislación comunitaria adoptada basándose en los artículos 18, 40, 44 y 52 del Tratado constitutivo de la Comunidad Europea, o bien posea un permiso de residencia válido, en calidad de residente permanente o de larga duración, en el respectivo Estado miembro, de conformidad con la legislación nacional de aplicación de la legislación comunitaria adoptada basándose en el artículo 63 del Tratado constitutivo de la Comunidad Europea, por lo que respecta a los Estados miembros en los que es aplicable la legislación comunitaria, o de conformidad con el Derecho nacional por lo que respecta a los Estados miembros **para los que no es aplicable**”

En dicha D.M. se establece que vivir equivale a tener vínculos familiares sociales y profesionales. Así en el considerando 9 de la misma, al referirse a este **procedimiento establece que** “El cumplimiento de la condena en el Estado de ejecución debe incrementar las posibilidades de reinserción social del condenado. Para asegurarse de que el Estado de ejecución hará ejecutar la condena cumpliendo la finalidad de facilitar la reinserción social del condenado, la autoridad competente del Estado de emisión debe tener en cuenta aspectos como la relación del condenado con el Estado de ejecución, por ejemplo si el condenado considera que allí se encuentran sus vínculos familiares, lingüísticos, culturales, sociales o económicos, y otros **lazos con el Estado de ejecución**”

En consecuencia y por aplicación de lo expuesto, el Juzgado Central de lo Penal para reconocer y acordar la ejecución en España de la sentencia dictada por otro país de la Unión Europea, en la que se condena a una persona que si bien no ostenta la nacionalidad española reside en nuestro país, considera que la mera condición formal o administrativa de un extranjero residente en España,

no supone “per se” que es suficiente para que el condenado ostente los derechos que la ley establece, sino que se requiere acreditar que reside de forma habitual y permanente en nuestro país y que además mantiene vínculos familiares laborales económicos o de otra índole, que acredite su arraigo en España. En suma como establece la DM referida, lazos reales y efectivos con el país de ejecución.

Para acreditar tal situación el Juzgado Central de lo Penal, solicita a los agentes de la autoridad un informe que acredite que el sujeto vive efectivamente en España y qué vínculos mantiene con nuestro país, denegando el reconocimiento de la sentencia condenatoria, si tales datos no quedan acreditados.

3.5. CAUSAS DE DENEGACION

3.5.1. Generales. Únicamente podrá denegarse, de manera motivada, el reconocimiento o la ejecución de un instrumento de reconocimiento mutuo que haya sido transmitido correctamente por la autoridad competente de otro Estado miembro de la Unión Europea, cuando concorra alguno de los motivos tasados previstos en esta Ley.

El legislador establece en su artículo 32 y 33 motivos generales de denegación, aplicables a todos los instrumentos de reconocimiento mutuo, unos de carácter obligatorio (vulneración del principio non bis in idem; cuando la orden o resolución se refiera a hechos para cuyo enjuiciamiento sean competentes las autoridades españolas y de haberse dictado la condena por un órgano jurisdiccional español, la sanción impuesta hubiese prescrito de conformidad con el Derecho español; cuando el formulario o el certificado que ha de acompañar a la solicitud de adopción de las medidas, esté incompleto o sea manifiestamente incorrecto o no responda a la medida, o cuando falte el certificado; o cuando se trate de resoluciones dictadas en audiencia del imputado, salvo que concurren excepciones legalmente establecidas) y otras de carácter facultativo (cuando exista una inmunidad que impida la ejecución de la resolución. una resolución cuando ésta se haya impuesto por una infracción distinta de las reguladas en el apartado 1 del artículo 20 que no se encuentre tipificada en el Derecho español, o en el apartado 2 del mismo artículo cuando tampoco esté tipificada en España y se trate de una resolución por la que se

imponen sanciones pecuniarias. La autoridad judicial española podrá denegar el reconocimiento y la ejecución de una orden o resolución cuando se refiera a hechos que el Derecho español considere cometidos en su totalidad o en una parte importante o fundamental en territorio español).

3.5.2. Específicas. Posteriormente, al regular en los artículos 77 y siguientes el procedimiento para el reconocimiento y ejecución en España de las sentencias condenatorias imponiendo penas privativas de libertad dictadas por países de la Unión Europea, tras hacer referencia a los supuestos previstos en los citados artículos 32 y 33, el legislador establece como causas específicas de denegación en su artículo 85:

a) Cuando en virtud de su edad, la persona condenada no habría podido ser declarada penalmente responsable por los hechos motivadores de la resolución condenatoria, de acuerdo con la legislación penal española.

b) Cuando la autoridad judicial española competente constate que, en el momento de recibir la resolución condenatoria, la parte de la condena que queda por cumplir es inferior a seis meses.

c) Cuando, sin perjuicio de lo previsto en el artículo 81, la resolución transmitida imponga una medida privativa de libertad que no resulte ejecutable de acuerdo con el Derecho español.

d) Cuando, antes de decidir sobre el reconocimiento y la ejecución de la resolución condenatoria, el Juez Central de lo Penal presente una solicitud para que la persona de que se trate sea procesada, condenada o privada de libertad en España por una infracción cometida con anterioridad a su traslado y distinta de la que lo hubiera motivado, y la autoridad competente del Estado de emisión no diera su consentimiento.

e) Cuando no se cumplan los requisitos exigidos para la transmisión de una resolución por la que se impone una pena o medida privativa de libertad.

3.6. EI CONSENTIMIENTO DEL CONDENADO

El Juez Central de lo Penal comprobará si el condenado ha prestado su consentimiento para cumplir la pena en España. Dicho consentimiento no se exige cuando:

- no sea necesario en virtud de la legislación del Estado de emisión.

- cuando el condenado sea español y resida en España.

- cuando el condenado de nacionalidad española, vaya a ser expulsado a España una vez puesto en libertad en el Estado de emisión sobre la base de una orden de expulsión o traslado contenida en la sentencia o en una resolución judicial o administrativa derivada de la sentencia.

- cuando se haya fugado o haya regresado a España por la condena dictada o por el proceso penal seguido en el Estado de emisión.

3.7. MEDIDAS CAUTELARES.

Durante el periodo de tramitación del procedimiento, si el condenado se encuentra en España, el Juzgado Central de lo Penal, con el fin de asegurar que no se sustraerá a la acción de la Justicia, puede adoptar medidas cautelares, tales como la prisión provisional, siempre a solicitud del Ministerio Fiscal, u otras como la retirada del pasaporte, la obligación de comparecer los días señalados ante el Juzgado u oficina policial mas próxima a su domicilio habitual o la prohibición de abonar el territorio nacional sin su autorización, tal como se establecen en la Ley de Enjuiciamiento Criminal.

3.8. RESOLUCION.

3.8.1. Informe el Ministerio Fiscal. Tras haberse recibido el certificado debidamente cumplimentado y la sentencia condenatoria, acreditada la nacionalidad española del condenado o que éste siendo nacional de otro país reside y mantiene arraigo o vínculos en España, no concurriendo ninguna de las

causas de denegación expuestas, y si el condenado ha prestado su consentimiento para cumplir la pena en España, en los casos en los que es necesario, el Juzgado Central de lo Penal remitirá el procedimiento al Ministerio Fiscal, para que emita el correspondiente informe, resolviendo posteriormente mediante auto sobre el reconocimiento o denegación de la resolución condenatoria.

3.8.2. Duración de la pena. En dicho auto acordando el reconocimiento y la ejecución de la pena en España, se hará constar expresamente el periodo total de privación de libertad que el condenado debe cumplir en España, descontando el que se haya cumplido en el Estado de emisión o el tiempo que haya permanecido privado preventivamente de su libertad por el delito o delitos que motivaron la condena.

Dicha resolución se comunicará la condenado, si tiene se encuentra en España y contra el mismo pueden interponerse los recursos ordinarios regulados en la LECr.

3.8.3. Adaptación de la condena. En el mismo auto, el Juzgado Central de lo Penal, adaptará la condena impuesta por el Estado de emisión, si ésta supera el límite de la pena máxima prevista para el delito en la legislación española.

La legislación a tener en cuenta, es la vigente en España, no en la fecha de la comisión del delito o en la que se dictó sentencia, sino en la fecha en la que se solicitó el reconocimiento de la resolución.

En estos casos se impondrá la pena máxima prevista en el Código Penal español, para el delito por el que el sujeto fue condenado.

3.8.4 Notificaciones y recursos. Dicha resolución se notificara tanto al Ministerio Fiscal como al condenado, si tiene se encuentra en España y contra el mismo pueden interponerse los recursos ordinarios regulados en la LECr.

Si el auto no fuese impugnado, en el plazo de 90 días deviene en firme, procediendo el Juzgado Central de lo Penal a remitir el procedimiento al Juzgado de Vigilancia Penitenciaria para que ejecute la pena o medida de libertad (artículo 81 LRM).

3.8.5. Retirada del certificado. Antes de que se inicie la ejecución de la pena en España, la autoridad competente del Estado de emisión tiene la facultad de retirar el certificado, procediendo en ese caso el Juzgado Central de lo penal a archivar el procedimiento y remitir a aquel lo actuado.

4) TRASLADO DEL CONDENADO A ESPAÑA PARA EL CUMPLIMIENTO DE LA PRIVACIÓN DE LIBERTAD.

4.1. Plazos. Si la persona condenada se encuentra en el Estado de emisión, será trasladada a España en el momento acordado entre la autoridad de emisión y el Juez Central de lo Penal, siempre dentro de los treinta días siguientes a la firmeza del auto de reconocimiento y ejecución de la resolución.

Si debido a circunstancias imprevistas no pudiera efectuarse el traslado del condenado en el momento acordado, se fijará una nueva fecha, inmediata a la desaparición de esas circunstancias, desde la que debe verificarse el traslado en el plazo de diez días.

4.2 Fuga del condenado. Si durante la ejecución de la resolución por la que se impone una pena o medida privativa de libertad se fugara el condenado, el Juez Central de Vigilancia Penitenciaria lo pondrá en conocimiento, sin dilación, del Juez Central de lo Penal que, además de comunicar esta incidencia a la autoridad de emisión, investigará las responsabilidades penales en que hubiera podido incurrir el condenado.

Cuando proceda la devolución del certificado, se hará constar el tiempo que el condenado ha permanecido privado de libertad en España en ejecución de esta resolución.

4.3. En virtud del principio de especialidad regulado en el artículo 92 de la LRM, la persona trasladada a España en el marco de este procedimiento, no podrá ser procesada condenada ni privada de libertad en España, como consecuencia de la comisión de una infracción anterior y distinta de la que hubiera motivado el traslado, salvo que concurran las excepciones legalmente previstas.

**“Judicial enforcement of the 909 DM in practice:
Lessons learned from the execution of judgments
and resolution of transfer requests”**

Jaime Moreno Verdejo
Prosecutor of the Supreme Court



Co-funded by the Justice Programme of the European Union 2014-2020

The “Resolution which a custodial sentence or measure is imposed”, is derived from DECISION MARCO 2008/909/JAI DE 27-11-2008

- ▶ It should have been transposed into our legislation before 05/12/2011
- ▶ It has been transposed in 20/11/2014, by law 23/2014. And it came into force on 12/11/2014
- ▶ **In general:**
This Act enables the Spaniards who are serving sentences in any country of the EU, to serve it in Spain; and conversely, that community convicts serving sentences in Spanish prisons can do in their home countries.

AFFECTED

1. **Community prisoners in Spain: 3.606 (26%)**
 - ▶ Of that number, serving a sentence **2.676**
 - ▶ Around **515** will serve their sentence before 6 months
 - ▶ It is, about **2.100** are ready to be transferred
2. **Spanish prisoners in EU countries: 601**

▶ 3

COMMUNITY PRISONERS IN SPAIN

STATE	NUMBER	STATE	NUMBER	STATE	NUMBER
GERMANY	93	ESTONIA	20	LUXEMBOURG	0
AUSTRIA	7	FINLAND	3	MALTA	0
BELGIUM	34	FRANCE	206	NETHERLANDS	129
BULGARIA	215	GREECE	7	POLAND	120
CYPRUS	5	HUNGARY	21	PORTUGAL	379
CROATIA	26	IRELAND	15	UNITED KINGDOM	181
DENMARK	6	ITALY	178	CZECH REPUBLIC	30
SLOVAKIA	12	LATVIA	29	ROMANIA	1.728
SLOVENIA	8	LITHUANIA	148	SWEDEN	6

▶ 4

SPANIARDS PRISIONERS IN EU COUNTRIES

STATE	NUMBER	STATE	NUMBER	STATE	NUMBER
GERMANY	97	ESTONIA	0	LUXEMBOURG	0
AUSTRIA	5	FINLAND	0	MALTA	7
BELGIUM	7	FRANCE	160	NETHERLANDS	3
BULGARIA	0	GREECE	3	POLAND	3
CYPRUS	0	HUNGARY	2	PORTUGAL	160
CROATIA	2	IRELAND	2	UNITED KINGDOM	43
DENMARK	0	ITALY	96	CZECH REPUBLIC	0
SLOVAKIA	0	LATVIA	0	ROMANIA	4
SLOVENIA	0	LITHUANIA	1	SWEEDEN	6

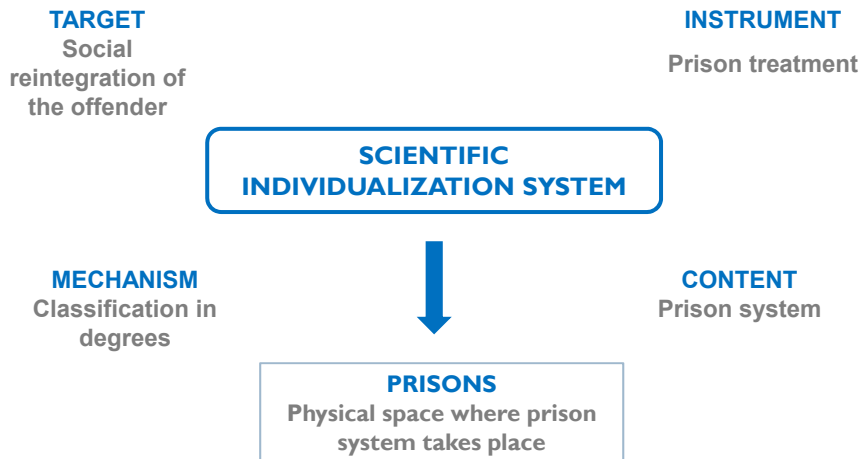
▶ 5

GENERAL REQUIREMENTS

- ▶ With the execution of the sentence in the convicted country of origin, social reintegration of prisoners must be supplied
- ▶ The conviction is final
- ▶ No pending cases
- ▶ Time of execution remainder of the sentence is greater than **6** months

▶ 6

SERVING THE SENTENCE IN SPAIN



▶ 7

SEVERAL CRIMES

1. **Material accumulation (arts 73 y 75 CP)**
2. **Legal accumulation (art.76 CP)**
 - **Relative limit:** Triple of the most serious
 - **Absolut limit:** Ordinary: 20 years
Extraordinary: 25 years
30 years
40 years
3. **Penalty accumulation (988 LECrim)**

▶ 8

AUTHORITIES

- ▶ **For transmission:** Judge of Surveillance Penitentiary.
- ▶ **To recognize and agree the execution:** the Central Criminal Judge.
- ▶ **To carry out the execution in Spain:** the Central Judge of Surveillance Penitentiary.

▶ 9

PROCEDURE WHEN SPAIN IS THE EMISSION STATE

Forms of initiation

- ▶ Ex officio
- ▶ At request of the executing State
- ▶ **At request of the convicted person** (who may submit a request to the Spanish issuing authority or to foreign execution)

▶ 10

PROCEDURE WHEN SPAIN IS THE EMISSION STATE

States to which Spain can send the execution of the sentence (only one)

- A. The State of which the offender is national and in which he has his habitual residence
- B. To his National State and which, according to the judgment or an administrative decision he will be expelled once released
- C. Any other State Member whose competent authority agrees in receiving the resolution

▶ 11

PROCEDURE WHEN SPAIN IS THE EMISSION STATE

States to which Spain can send the execution of the sentence (only one)

- D. Any other State Member without obtaining their consent when so declared to the General Secretariat of the Council of the EU, subject to reciprocity and concur at least one of the following requirements:
 - The convicted reside legally and continuously in that State for at least five years and keep the right of permanent residence.
 - Who is a national of the executing State but not habitually resident in it.
 - The transmission of the decision will be communicated to the judge or court that issued the sentence.

▶ 12

PROCEDURE WHEN SPAIN IS THE EMISSION STATE

Duration of the procedure

- ▶ The procedure shall be resolved within **90** days
- ▶ The transfer must be made within **30** days of acceptance of the executing State
- ▶ If circumstances prevent it, he must be transferred within **10** days of the new date agreed, after the disappearance of the circumstance that prevents take place

▶ 13

PROCEDURE WHEN SPAIN IS THE EMISSION STATE

Judicial resolution

- ▶ The court order will be notified personally to the prisoners and also to the judge or court which handed out the conviction
- ▶ The common model is the **CERTIFICATE**

▶ 14

ACTIONS CARRIED OUT IN 2015

Spain as the emission State

- ▶ **Innitiated procedures: 348**
- ▶ **Decisions: 193**
- ▶ According the transfer: **81**
- ▶ Dismissing or rejecting: **112**

▶ 15

DISMISSING

Reasons

- ▶ Lack of linkage with the requesting country
- ▶ For having another pending case
- ▶ For not proving identity
- ▶ By time pending sentence
- ▶ The seriousness of the crime
- ▶ Resignation
- ▶ Having already under probation

▶ 16

TRANSFERS MADE IN 2015

Of the **81** approved by the court, there have been transferred **24**, with the following distribution:

- ▶ Netherlands: 7
- ▶ France: 6
- ▶ Italy: 3
- ▶ Belgium: 2
- ▶ United Kingdom: 2
- ▶ Austria, Bulgaria, Romania and Sweden: 1 to each State

▶ 17

THANK YOU

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ALTERNATIVES TO DETENTION FOR JUVENILE OFFENDERS: AN OVERVIEW OF GOOD PRACTICES IN EUROPE

Silvio Ciappi

**THE IMPACT OF DETENTION ON PRISONERS IMPACT ASSESSMENT OF DETENTION,
JUVENILE JUSTICE IN RELATION TO DETENTION, THE TRANSFER OF PRISONERS
Madrid, 27 -28 October 2016**



Co-funded by the Justice Programme of the European Union 2014-2020

STRUCTURE OF THE CONTRIBUTION

- Brief overview
- Alternatives to detention for juvenile offenders
- an overview of good practices in Europe
- Conclusions

DEFINITION OF THE PROBLEM

The concept of the present contribution was born by 2 main factors:

- the fact that **detention is not always a last resort** as prescribed by the CRC;
- the **lack of mainstreaming** of good practices related to detention alternatives addressed to youth offenders.

Improving conditions relating to detention

- Identification of good practices related to alternative measures targeted to youths in conflict with the law

KEY ELEMENTS TO BE TAKEN INTO CONSIDERATION

- The need of security coming from media and social society
- the youth's right to rehabilitation and re-inclusion

DEFINITION OF THE PROBLEM

Convention on the Rights of the Child (CRC)

- *Art. 40 (juvenile justice)*
- *Art. 37 (detention)*

Mile stone of international law setting out **best practice** and guidance on the treatment of children in conflict with the law, in particular regarding the sanctions and measures to which they are subjected and their treatment in **detention** that has always to represent **the last resort**

DEFINITION OF THE PROBLEM

Despite the existence of **ad hoc monitoring tools** aiming to ensure the respect of **CRC** and the other key standard (i.e. **European Prison Rules (Rec.(2006)2)**)

- the recent improvement in the availability of community sanctions

WEAKNESSES

- The gap between the theory of the international rules and the reality of practice
- The absence of updated data on the youth justice system intervention making difficult to track trends or compare jurisdictions.
- The rarely mainstreaming and transferability of best practices

DEFINITION OF THE PROBLEM

A multi-disciplinary and multi-agency approach and a close cooperation between public and private is hence necessary to ensure holistic treatment and continuity in the care of juveniles in conflict with the law

DEFINITION OF THE PROBLEM

In specific we need:

- to put in place the necessary structures and supports to ensure that **diversion** becomes properly integrated into the legal system,
- that such measures are **properly coordinated** between agencies and that they are implemented by **trained** staff. (**Commissioner for Human Rights, Children and Juvenile Justice: Proposals for Improvements, CommDH/Issue Paper (2009)**)

These elements are essential to ensure that decision-makers, including the judiciary, are aware of the advantages of diversionary mechanisms and have the confidence in them to support their use (**EU Agenda on Children's Rights; the Stockholm Agenda; Eu Commission Action Plan**)

To pursue this aim we need ad hoc reform able to guarantee that juvenile justice standards are implemented in a manner that brings benefits to **children** and the **society** as a whole promoting **alternative detention as key measure for the rehabilitation and re-inclusion of youth offenders.**

THE JUSTICE NEEDS OF YOUTHS IN CONFLICT WITH THE LAW

- To **participate** actively and be directly involved in all the phases;
- To **understand** the procedure they will have to face with;
- To **be accompanied** from the beginning to the end of the trial;
- To **maintain the relation with parents** and to be supported by the same;
- To **be supported** by a competent lawyer;
- To **be informed** on any decision regarding them;

THE JUSTICE NEEDS OF YOUTHS IN CONFLICT WITH THE LAW 2

- To have **access to ad hoc programmes** and services related to **diversion, rehabilitation, re-inclusion and aftercare**;
- To **continue the educational and training pathway** started before the entrance in the juvenile justice system;
- To have **access to alternative and diversion measures** forecast by the law;
- **Not** to be **labeled**;
 - To feel that their point of view is **respected**.

INTERNATIONAL STANDARDS AND PRINCIPLE

At the **UN level**:

- United Nations **Convention on the Rights of the Child** (particularly Articles 37 and 40)
- **Committee on the Rights of the Child's General Comment No. 10** (2007) on children's rights in juvenile justice (especially paras. 68-77)
- United Nations **Standard Minimum Rules for the Administration of Juvenile Justice** (Beijing Rules)
- United Nations **Rules for the Protection of Juveniles Deprived of their Liberty**
- United Nations **Standard Minimum Rules for Non-Custodial Measures** (the Tokyo Rules)

INTERNATIONAL STANDARDS AND PRINCIPLE 1

At the European level:

- **European Convention on Human Rights**
- **European Rules for juvenile offenders subject to sanctions or measures**
- **Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.**

INTERNATIONAL STANDARDS AND PRINCIPLE 2

The following **key principles** emerge from these international standards

- **Child-friendly justice**
- **Dignity in criminal justice processes**
- **Detention as a measure of last resort**
- **Proportionality**
- **Best interests**

ALTERNATIVES TO DETENTION FOR JUVENILE OFFENDERS

- Imposition of fines and Probation
- Educational measures and Mentoring
- Care-based and Therapeutic measures
- Restorative approaches

ALTERNATIVES TO DETENTION FOR JUVENILE OFFENDERS 1

Imposition of fines and Probation

- **The imposition of a fine** as an alternative is possible under the legislation of many courts at the sentencing stage. The young person may be required to make restitution or pay some form of compensation to the victim.
- **Probation** is a common type of alternative measure. Young people are placed under the supervision of probation officers in the community. They may be required to meet certain requirements such as curfews and behaviour requirements. They may also be required to take part in an education, training, or other type of programme which is considered beneficial

ALTERNATIVES TO DETENTION FOR JUVENILE OFFENDERS 2

Educational measures and Mentoring

- **Educational interventions** are a common type of alternative measure, and can take various forms. Often, orders which are not purely educational will nevertheless have an educational component or aim. The European rules for juveniles subject to sanctions or measures are particularly strong on the need for an educational response to offending behaviour by young people.
- **Mentoring orders** involve pairing the young person with an adult volunteer in the community. Mentors may work with both the young person and his or her family, and meets with them on a regular basis. Mentors provide support, advice and guidance to young people, and listen to the young person and any concerns that they may have.

ALTERNATIVES TO DETENTION FOR JUVENILE OFFENDERS 3

Care-based and Therapeutic measures

- **Alternative measures which are based on providing care and looking after the welfare needs of the child** are used in a number of jurisdictions. The way in which care can be provided can vary from jurisdiction, but a common type of measure in this category would include an order for foster care. Such care-based orders may be particularly useful if it is considered that the child's family environment is contributing to his or her offending behaviour. Orders may also be made for cohabitation with another person, family or educational group. In these types of orders, the aim is to provide care for a young person outside of their family group for a period of time, during which their offending behaviour can also be addressed.
- **These care-based measures can also be combined either with educational measures or therapeutic measures.**

ALTERNATIVES TO DETENTION FOR JUVENILE OFFENDERS 4

Restorative approaches

- **Restorative justice** has become a central aspect of practice in many juvenile justice systems, and, although not explicitly mentioned in the **Convention on the Rights of the Child**, its use has been supported and encouraged by the **Committee on the Rights of the Child**. Restorative justice aims to **repair the harm** caused by a criminal offence by bringing together the **offender**, the **victim** and **members of the community**

CONCLUSIONS

A number of **common characteristics** have been identified among young people who come into contact with the criminal justice system i.e.:

- ✓ **Care system**
- ✓ **Mental health and/or addiction problems**
- ✓ **Imprisoned Parents or siblings**
- ✓ **Peer group**

These may be useful factors to consider in more detail in a national context when designing appropriate alternatives to detention.

CONCLUSIONS 1

HENCE

- In developing appropriate alternatives to detention there are a number of factors which will need to be taken into account such as the **individual circumstances** and **personal characteristics of the young people concerned**.
- There is a need to **develop** and **choose** alternative measures which **meet** the various **needs** of young people in conflict with the law.
- A **wide variety of measures** will need to be available in order to respond to young people's needs and requirements on a case by case basis.

CONCLUSIONS 2

Despite the wide range of **alternative sanctions** available, challenges still remain in encouraging the maximum possible use of these ones.

This challenge once again highlights the need for a **strong evidence-based evaluation program** which supports the use of alternative measures.

CONCLUSIONS 3

How to enhance the use of Alternatives?

- **Research** into the use of alternative measures should be encouraged at a **national level**.
- a **robust systems of data collection** should be put in place.
- **regular review and evaluation** of implemented practices is fundamental to assess their effectiveness.
- **Alternative measure system** needs to focus on **ensuring that sufficient resources** are allocated within juvenile justice systems to these alternative measures.
- A **community-based sanction** cannot be imposed if it cannot be reasonably accessed by the young person in question.
- The **perception by the public and policy-makers** should be oriented in favor of alternatives.
- The use of **multi-disciplinary approaches** should be enhanced.
- The **specialization** and **training** of key professionals should be enhanced.

THANK YOU FOR YOUR
ATTENTION.

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