ERA - Improving measures related to detention conditions at EU level
Best practice, legislation and the European Commission’s Green Paper

Material detention conditions, execution of custodial sentences and prisoner transfer in the EU Member States – an IRCP study

14 February 2014 - Trier

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Presentation Overview

- Mutual recognition and/of custodial sentences in the EU

- IRCP Study (2011)

  Material detention conditions, execution of custodial sentences and prisoner transfer in the EU Member States
  - Aim
  - Methodology
Presentation Overview

- Study results. Identified problems:
  - Various and often substandard material detention conditions
  - Significant variations in MS’ sentence execution modalities & early/conditional release, earned remission and suspension of sentence provisions
  - Poor procedural status (consent & judicial review) in transfer procedures
  - Knowledge and (access to) information for MS and prisoner regarding:
    - FD Custodial
    - Foreign material detention conditions
    - Foreign law and practices
Presentation Overview

- **Consequences:**
  - Failing social rehabilitation
  - Undermining smooth cooperation
  - Compromising fundamental rights

- **Proposed measures:**
  - Enhancing knowledge and (access to) information
  - Protection of prisoners’ rights by improving material detention conditions
  - Safeguarding sentencing equivalence & supporting sentence execution
  - Improving prisoners’ procedural rights
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Mutual recognition. Short history

- **Tampere 1999**
  - Mutual Recognition (MR)
  - MR presupposes mutual trust between MS vis-à-vis their criminal justice systems
  - Based on a shared commitment to …”respect for human rights, fundamental freedoms and the rule of law”

- **MR Implementation Programme 2000**
  - Strengthen co-operation between MS
  - Enhance protection of individual rights
  - Ease process of rehabilitating offenders
  - Contribute to legal certainty in the EU
FD Custodial

- Predecessors
  - Based on principles of exequatur and voluntarism

- FD Custodial (2008)
  - New position for prisoner and executing MS: radical change
    - Compulsory transfer mechanism to MS of Nationality (and residence)
    - Adaptation of sentence (remains) possible
  - Official rationale embedded in FD:
    - Enhanced social rehabilitation and reintegration for prisoner
IRCP Study. Aim and methodology

- **Aim**
  - Assessing the feasibility of the application of the FD Custodial
  - Assessing the feasibility of its social rehabilitation rationale

- **Methodology ~ Main research question**

  In case there is a vast variety between MS’ correctional and sentence execution systems as well as material detention conditions, the question should be raised whether or not a pure form of MR can work in everyday practice, especially in light of the importance attached to the social rehabilitation of the offender.

  - Analysis on potential obstacles & concerns regarding future application of the FD
  - Analysis of flanking measures to be considered for a good and just application of the FD
Methodology

- MS legal analysis
  - Analysis of material detention conditions & sentence execution practices in EU MS
  - SPOC survey: online questionnaires
  - Compliance tables

- Practitioner’s survey (cross-border analysis)
  - Survey through online questionnaires

- Additional international/European stakeholder consultation
- Validation workshops
- EuroPris 2013 Expert Group 909
### Results: Compliance table (detention conditions)

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Identified problems (I): Material detention conditions

Various and substandard detention conditions in the MS

“Highlights”

- **Overcrowding**: cell sharing, cell size and cell capacity
- **sanitation facilities, clothing, bedding and nutrition**: privacy, screening and appropriate clothing
- **health care**: injury detection, women’s health care, forced feeding and hunger strikers, monitoring prisoners at risk of suicide, medical examination (upon arrival), **accommodation of vulnerable prisoners**
- **other**: special cells, recording, staff contact, monitoring, security assessments, protection status and strip searches
Identified problems (II) MS legal systems variety

- Sentence incompatibility
  - Adaptation of the sentence by executing MS where incompatible in terms of duration and/or nature

- Significant variations in MS’ sentence execution modalities & early/conditional release, earned remission and suspension of sentence provisions
Identified Problems (III) Compulsory procedure

- Poor procedural status of prisoner
  - Triviality of consent
  - Uninformed opinion
  - Ambiguity regarding the right to legal review

- Knowledge & information gap
  - FD knowledge & info
  - Knowledge & info on foreign law, practices & material detention conditions
Finally: Social rehabilitation core problem

- Aforementioned knowledge & information crux
  - MS failure to correctly interpret the sociale rehabilitation purpose

  Only 67% of respondents indicated that they thought the terms of the FD required Member States to assess the social rehabilitation of prisoners on a case by case basis rather than assuming that serving a sentence in the prisoner’s home state would automatically facilitate their social rehabilitation.

- Official rationale vs. Practical policy option
  - Means to solve domestic prison overcrowding?
  - Export of foreign prisoners?
Follow up: EuroPris 2013 Expert Group

  - In collaboration with the IRCP
- Expert Group confirmed our concerns
- Other practical problems:
  - National procedures: legal/practical variety
  - Determination of residence (‘living’ place) of a person
  - Transport of prisoners and travel documents
  - Combined 909/947 request (probation and alternative sanctions)
  - Connection with EAW
Flanking measures & Recommendations

- Enhancing knowledge and (access to) information:
  - Implementation handbook, training and monitoring
  - Access to information

- Protection of prisoners’ (fundamental) rights by improving material detention conditions:
  - Training and best practice promotion
  - Increasing the frequency of CPT inspections
  - Introducing binding European minimum standards?
Flanking measures & Recommendations

- Safeguarding sentencing equivalence & supporting sentence execution:
  - Approximation: 2 generic severity rankings
  - Dual lex mitior + no unreasonable aggravation (review)

- Improving prisoners’ procedural rights:
  - Introducing a motivational duty for issuing states
    ~ Including sufficiently high material conditions
  - Right to an ‘informed’ opinion + to legal assistance
  - Competent authorities (necessarily judicial bodies?)
  - Right to a judicial review
Further information
Thank you
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