

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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Speaker information

- **Master in Law – Major National & International Law (University of Ghent, 2011)**
- **Master in International Relations & Diplomacy (University of Antwerp, 2012)**

- **Worked as a project researcher at the Institute for International Research and Criminal Policy (IRCP, University of Ghent) in 2011 with a focus on:**
 - European criminal law
 - Liability of legal persons in the Member States of the EU

- **Joined the IRCP in 2013 as a Doctoral Researcher with a focus on:**
 - European criminal law
 - Detention in the EU
 - Mentally disordered suspects and offenders in the EU

Presentation Overview

- Mutual recognition and/of custodial sentences in the EU
- Council Framework Decision 2008/909/JHA: 'FD Custodial'

□ 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

- CoE Convention on the transfer of sentenced persons (1983)
+ Additional Protocol (1997)

- 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 or 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)

Country	Y %	N %	Country	Y %	N %
Finland	100	0	Latvia	67	34
Slovakia	98	3	Czech Republic	66	35
Estonia	97	4	Austria	65	36
Hungary	93	8	France	65	36
Germany	84	17	Romania	65	36
Belgium	82	19	Greece	62	39
Malta	78	23	Netherlands	60	41
Denmark	74	27	Lithuania	55	46
Slovenia	74	27	UK	55	46
Spain	74	27	Bulgaria	53	48
Italy	72	29	Poland	51	49
Cyprus	69	32	Ireland	32	69

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

- EuroPris 2013 Expert Group on Framework Decision 909 Working Group Report
 - 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

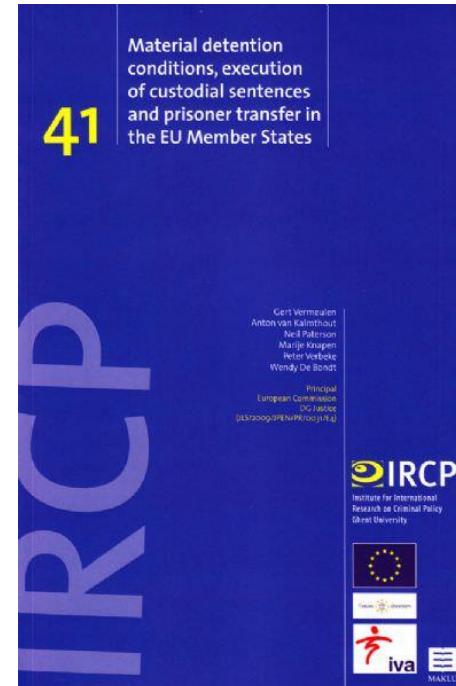
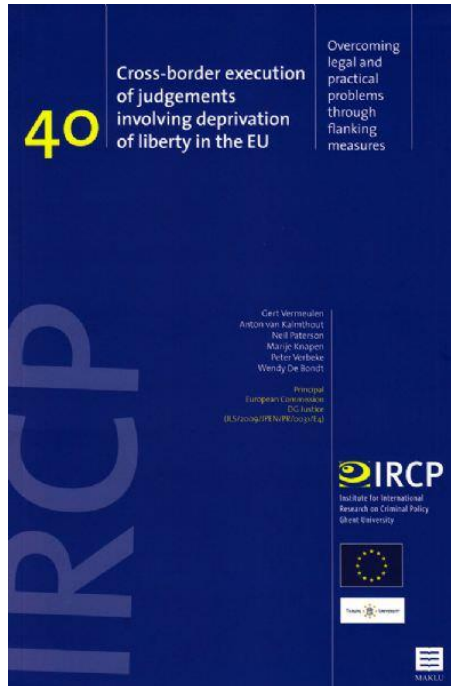
- Protection of prisoners' (fundamental) rights by improving material detention conditions:
 - Training and best practice promotion
 - Increasing the frequency of CPT inspections
 - Introducing binding European minimum standards?

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



research

publications

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Thank you

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