

European detention norms and standards: a policy-making perspective

1st International Correctional Research Symposium | 27 – 29 March 2017
Ghent, Belgium

Rebecca Deruiter

t. +32 9 264 84 62

Rebecca.deruiter@UGent.be

Introduction

- Focus: European detention norms for prisoners

- CoE & EU

“Products of the same idea, the same spirit and the same ambition”

(Juncker, 2006)

-> In essence very different!

- Aims:

- Highlight policy-making processes
- Judicial cooperation in criminal matters
 - How to deal with diversity?

-> Interplay between the principles of mutual trust and recognition and the protection of fundamental rights

- Methodology:

- Literature & document analyses
- Expert interviews

Why detention conditions matter in Europe?

- Upholding fundamental rights & freedoms (CoE + EU)
- Judicial cooperation in criminal matters (EU)
Based on mutual recognition & trust in member states criminal justice systems

“Mutual recognition of judicial decisions is a process by which a decision usually taken by a judicial authority in one EU country is recognized, and where necessary, enforced by other EU countries as if it was a decision taken by the judicial authorities of the latter countries.” (Commission)

E.g. EAW, Transfer of Prisoners, etc.

- **Doubts about the way in which standards are upheld across the EU (Commission Green paper on detention)**
-> **Varying and often substandard material detention conditions!**
(IRCP Study 2011 + Commission + ECtHR/CJEU case law)

How are they developed?

Council of Europe

- PC-CP & CDPC
 - CPT
 - European Prison Rules
 - ECtHR
- } -> Mutually reinforcing
- CPT
 - Stronger & weaker members
 - Increased political influence!?
 - European Prison Rules (2006)
 - Counterbalancing Western perspective on detention
 - Driven by “policy entrepreneurs”
 - Consensus of 47 member states
 - Currently: revision of the commentary only

“Hardening soft law” (Judge Pinto De Albuquerque *Muršić v Croatia*)

How are they developed? (2)

European Union

- Judicial cooperation in criminal matters
- Green paper on detention (2011)
 - Detention conditions detrimental impact on mutual recognition
- Aranyosi en Căldăraru (CJEU, 5 April 2016)
 - Principles of mutual trust and recognition are not unconditional!
 - Postponement no refusal
 - Evidence of a 'real risk' of inhuman and degrading treatment
 - Request additional information
 - Which evidence? (NGO's? (inter-)national organizations)
 - Guarantees?
 - What about the transfer of prisoners (FD 909)?

How are they developed (3)

- Commission:
 - Focus on implementation & procedural rights
 - Limited capacity regarding the issue of detention
 - Political will
 - Priorities?
 - Commission Juncker & role of different Commissioners
 - IRCP Handbook?!
- Council
 - Lack of political will?
- European Parliament
 - LIBE Committee

How to deal with diversity?

- Problematic?
 - Different legal cultures, backgrounds, etc.
 - Not an issue only when it results in systemic human rights deficiencies (threshold)
 - Started with assumed mutual trust instead of fundamental rights
 - Harmonization to what extent?
- Increase understanding & clarity
- CoE & EU: Very limited cooperation!
- EPR: Reflect consensus of 47 member states

Conclusion & Discussion

- CoE
 - Shifting dynamics
 - Core business: Upholding fundamental rights & freedoms
- EU: Upholding a system based on Mutual trust and recognition but with limitations
- Need for legislative intervention as regards prison conditions?
 - Binding rules regarding detention conditions?
 - Feasible
 - Political realities & priorities
- New questions arise with transfer of prisoners
 - Role of prison administration?
 - Guarantees?
 - Time limits?
 - Postponement = de facto refusal?

www.ircp.org

Contact

Rebecca Deruiter

t. +32 9 264 84 62

Rebecca.deruiter@UGent.be

IRCP

Ghent University

Universiteitstraat 4

B – 9000 Ghent