

International co-operation in the criminal law field and prison overcrowding

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Overview

Co-operation and prison overcrowding

Transfer of supervision and Transfer of prisoners

Outstanding issues

Conclusions

International co-operation and prison overcrowding

- International co-operation necessary for the social rehabilitation in the country, where the prisoner will live after his/her release
- Focus on “foreign” prisoners (excluded stateless people)
- Should be informed on the legal situation, where transfer arrangement are applicable (only few countries are able to transfer prisoners on the basis of reciprocity)

International co-operation and prison overcrowding

- National solutions/strategies against high percentage of foreign prisoners: “repatriation”
 - Court decision to terminate the enforcement, based on a deportation order and the willingness of the person concerned to leave the country, while the rest of the sentence remains open
 - Lower requirements than a conditional release
 - Further enforcement, if returning to the sentencing country

International co-operation and prison overcrowding

- Specific areas of co-operation
 - Transfer of supervision
 - Transfer of sentenced persons

European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 1964

- Ambitious project
- Not widely accepted Convention by only 20 ratifications
- Target: social rehabilitation by promoting conditional release and transfer of the supervision
- Three options
 - Only transfer of the supervision only,
 - Transfer of both supervision and later necessary enforcement
 - Transfer of the whole responsibility

European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 1964

- Possible reasons for the lack of acceptance:
 - supervisory measures only in accordance with the law of the requested State, but also probation officer and representative of a social service
 - Practical issues (whole documentation necessary)
 - only in cases where the sentenced person has not been transferred

European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 1964

- In Austria: less than 10 Cases in 4 decades
 - War criminals, sexually motivated offenders, mental handicapped prisoners
 - The transfer of the supervision is a condition of the Court decision on conditional release (“no conditional release without transfer of the supervision”)

Council Framework Decision 2008/947/JHA Probation

- Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions
- Target: more effective than convention 1964
- Replace the Convention between Member States
- Types of probation measures and alternative sanctions
- Using a standard form (certificate)
- Double criminality (except list offences)
- Adaptation of the probation measures or alternative sanctions to be compatible with the law of the administering State

Council Framework Decision 2008/947/JHA Probation

- Not evaluated until now
- Implemented by all Member States except 2 States

European Convention on the International Validity of Criminal Judgments of 1970

- Only 23 ratifications
- Traditional structure
 - Requirement
 - Grounds of refusal
 - Also against the will of the person concerned

Complex provisions (68 Articles) including fines, confiscation orders and disqualifications

Convention on the Transfer of Sentenced Persons of 1983

- Reaction the poor application of the European Convention on the International Validity of Criminal Judgments
- Large and worldwide accepted basis for cooperation
- Obligation to cooperate and to inform, but to transfer
- 46 ratifications, 22 accessions, 68 Member States
- Consent of the person concerned
- 2 Options continuing enforcement or Adaptation of the sentence

Schengen Agreement 1985

- Judicial part as a result, what can be improved in judicial cooperation
- Supplementing the Convention on transfer of sentenced persons (Article 67 to 69)
- No consent, where the sentenced person escaped from the sentencing State to the administering State, which is the State of nationality
- Reason: No extradition of own nationals and lack of jurisdiction for offences committed abroad
- Interpretation issue: term “escaped”

Additional Protocol to the Convention on the Transfer of Sentenced Persons of 1997

- Transfer without consent
- As an addition protocol still no obligation to transfer, controversial discussions
- 38 ratifications, 1 accession
- No consent necessary:
 - fled from the sentencing State
 - expulsion or deportation order
 - Granted extradition to the administering State

Council Framework Decision 2008/909/JHA

- 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 purposes of their enforcement
- Compilation of the existing instruments
- Only one Member State did not implement
- Exclusive instrument, Member State will not apply other Conventions

Council Framework Decision 2008/909/JHA

- Obligation to accept prisoners where the conditions enshrined in the Framework Decision are met
- Will be evaluated in the next round of mutual evaluation between EU Member States Using a standard form makes it easier to identify the main information
- Time limits for the decision and for the actual surrender
- Definition of an integrated foreigner to be treated as an own national

Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons of 2017

- Definition of the terms “Escaped” or “fled”
- Every existing deportation order, not only those linked with the judgment in question
- Rule of specialty applies with a time limit of 90 days
- Also persons, which refuse to give statements on the question of their transfer

Outstanding Issues on Cooperation

- Length of proceedings
 - No real improvement since decades
 - From the start of the transfer proceedings in the sentencing State until the actual surrender more than one year
 - Even longer, if the sentenced person opposes against his/her transfer in the sentencing and in the administering State
 - Consequence: Only long term sentenced persons will be transferred (4 years and more)
 - Unreasonable: extradition proceedings much more quicker

Outstanding Issues on Cooperation

- Lengthy consultation proceedings with the State of his/her residence of non-nationals
- Separate evolution and decision of the Immigration/Asylum authority in the administering State: *"if the sentenced person lives in 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"*

Outstanding Issues on Cooperation

- Transfer against the will of the sentenced person
 - Reluctance of Member State: “no social integration or rehabilitation possible against expressive will of the person concerned”
 - Full scale remedies in both States
 - Question of prison conditions following the jurisprudence of the ECHR to be clarified before the surrender

Outstanding Issues on Cooperation

- Practical issues
 - Full translation regime
 - Full set of document, even were a standard form is used
 - Transit permission after the final decision of the administering State
 - In case of air transport: Security issues and reluctance of airlines
 - No European standards or European authority dealing with the transborder transportation of prisoners

Conclusions

- Existing legal instruments provide a sufficient basis for co-operation
- Co-operation between States can contribute to a reduction of the number of prisoners
- Enhancing social integration and/or rehabilitation leads to an earlier conditional release
- More willingness of Member States to take own nationals,
 - irrespectively of existing links
 - on the basis of a valid deportation order

Conclusions

- Focusing on the content of a standard form
- The consent of the person concerned is still decisive
- Length of the transfer proceedings is still a problem

Thank you for your attention !

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