Detention: information, rehabilitation and victims’ rights

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Some 30,000 across the EU – roughly 5% of total in detention

- ‘customer base’ + not detained

Figure 24: Number of persons detained (pre- and post-trial) that are from another EU Member State, by EU Member State, compared to EU average

Note: Data used is the non-adjusted.

Background

- EC request in May 2014
- FRA’s AWP 2015 and 2016
- In-house research 2014
  - Attempts to interview transferees under ESO but no cases (then)
- FRA’s research network spring 2015 (detailed guidelines)
- Consultations / interviews with experts (EC, other projects, MSs)
- Comparative report drafted during 2015/2016
- Published report November 2016 + ‘INFOCRIM’
  - Focus on the three aspects, across the three FDs
  - Outlook on what the EU could do – FRA Opinions
Contents

1. Detention and alternatives + fundamental rights standards (instruments and jurisprudence)
2. Social rehabilitation – how is it perceived and dealt with
3. Information and consent – how well are consequences understood
4. Victims of crime – right to information and involvement
5. Vulnerable groups
6. Visions for improvements – boosted mutual trust through enhanced monitoring
ICCPR 10 (3)

The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. […]”
Figure 2 Existence of the procedure in the issuing state to inform the suspect/sentenced person of the option to transfer the judgment or decision to another Member State

Note: Bulgaria and Ireland did not implement the FD 2008/909, however transfer is possible in accordance with the CoE Transfer Convention. Those states are both listed as having established procedures and also as states that did not implement the decision. Ireland did not implement the FD 2008/947, however transfer is possible according to the bilateral agreements, the state is listed both as having procedure and as a state that did not implement the decision.

Source: FRA, 2015.
Figure 1: EU Member States that have a procedure to provide information to victims

<table>
<thead>
<tr>
<th></th>
<th>Procedure established by law</th>
<th>Procedure established in practice</th>
<th>No procedure established</th>
</tr>
</thead>
<tbody>
<tr>
<td>FD 2008/909</td>
<td>3</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>FD 2008/947</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>FD 2009/829</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

(Source: FRA 2016, data as of 1st June 2015)

Figure 4: Number of EU Member States providing the victims’ right to receive information on the decision to transfer

<table>
<thead>
<tr>
<th></th>
<th>Established in law</th>
<th>Established in practice</th>
<th>No right</th>
</tr>
</thead>
<tbody>
<tr>
<td>FD 2008/909</td>
<td>19</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>FD 2008/974</td>
<td>19</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>FD 2009/829</td>
<td>14</td>
<td>3</td>
<td>0</td>
</tr>
</tbody>
</table>

Note: The Czech Republic has established this right in law for all three Framework Decisions, Belgium for 2008/909 and 2008/94 and the United Kingdom for 2008/909.

Source: FRA 2016, data as of 1st June 2015.
Concerns

- Rehabilitation seen as a rather narrow concept
  - Continuity of level of security ‘gained’, training, education, medical/psychological treatment, etc – for rehabilitation (form with multiple choice needed?)
  - Social inquiry report (e.g. BE)
- Definitions ‘home country’ v rehabilitation
- Level of understanding of ‘transferred to what’
  - Consent / information
  - Prison conditions / calculations of time, benefits, etc (909)
- Transfer – information to victims of crime?
  - Victims chose what to be informed about (SE)

- Translations
- E-tools (CoE proposal for secure file transfer)
- Data collection
<table>
<thead>
<tr>
<th><strong>Aim (emphasis added to the cited text))</strong></th>
<th><strong>Probation and alt. sanctions</strong></th>
<th><strong>European Supervision Order (ESO)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Art 3 (1):</strong> “The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.”</td>
<td><strong>Art. 1:</strong> “This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures an alternative sanctions, in case of offenders who do not live in the State of conviction. [...]”</td>
<td><strong>Art. 2 “Objectives: due course of justice non-custodial measures to improve the protection of victims and of the general public. The recitals provide for elaborated objectives.”</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Article on fundamental rights (no differences exist)</strong></th>
<th><strong>Recital on fundamental rights (differences in bold)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>3 (4) “This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].”</strong></td>
<td><strong>(13) “This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [TEU] and reflected by the [Charter], in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting refusal to execute a decision when there are objective reasons to believe that the sentence was imposed for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person’s position may be prejudiced on any one of those grounds.”</strong></td>
</tr>
<tr>
<td><strong>1 (4) “This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].”</strong></td>
<td><strong>(5) “This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 [TEU], which are also expressed in the [Charter], especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective reasons to believe that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or that this person might be disadvantaged for one of these reasons.”</strong></td>
</tr>
<tr>
<td><strong>5 “This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].”</strong></td>
<td><strong>(16) “This Framework Decision respects fundamental rights and observes the principles recognised, in particular, by Article 6 [TEU] and reflected by the [Charter]. Nothing in this Framework Decision should be interpreted as prohibiting refusal to recognise a decision on supervision measures if there are objective indications that it was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or that this person might be disadvantaged for one of these reasons.”</strong></td>
</tr>
</tbody>
</table>
FRA Opinion April 2016 – EP Request

• Comparative data and information
  – UN and Council of Europe monitoring bodies
    • CPT
    • ECSR
    • ECtHR
  – EU, National

• Context through these bodies

• Bodies – independence and effectiveness
  – National Human Rights Institutions, NPMs, etc

This opinion underlines the importance of drawing on existing data and information in any assessment of the values in Article 2 TEU, and outlines how this could be done.
May 2015
Child-friendly justice – Perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States

Report
Each year thousands of children take part in criminal and civil judicial proceedings, affected by parental separation or other family conflicts. This report provides an overview of the situation of children in the EU Member States and identifies good practice examples in the area of child-friendly justice.

June 2015
Severe labour exploitation: workers moving within or into the European Union

Report
Worker exploitation is not an isolated or marginal phenomenon. But despite its pervasiveness in everyday life, severe labour exploitation and its adverse effects on third-

August 2015
Freedom to conduct a business: exploring the dimensions of a fundamental right

Report
This report seeks to understand how fundamental rights can be used to achieve the strategic goal of promoting the freedom to conduct a business.

February 2016
How is the EU Charter of Fundamental Rights used at national level

Promotional material
This leaflet explains how national parliaments, governments and courts can use the Charter and shows how the Charter was used at the national level in 2015.
Related instruments (investigation requests, fair trial provisions, arrest warrants)

**EIO**
- European Investigation Order
  - Directive 2014/41/EU
    - 3 April 2014
  - Transposition deadline 22 May 2017

**EAW**
- European Arrest Warrant
  - Framework Decision 2002/584/JHA
    - 13 June 2002
  - Transposition deadline 1 January 2004

**A**
- Interpretation and translation
  - Directive 2010/64/EU
    - 20 October 2010
  - Transposition deadline 27 October 2013

**B**
- Right to information on rights and charges
  - Directive 2012/13/EU
    - 22 May 2012
  - Transposition deadline 2 June 2014

**C (1) + D**
- Lawyer and right to have third party informed
  - Directive 2013/48/EU
    - 22 October 2013
  - Transposition deadline 27 November 2016

**C (2)**
- Provisional legal aid when deprived of liberty and in EAW proceedings
  - Draft directive COM(2013) 824
    - 27 November 2013

**Criminal Procedure Roadmap (parts)**

**Imprisonment in ‘other’ MSs**

**Consent**
- Right to be heard

**Alternative sanctions to imprisonment**

**Supervision measures as alternative to provisional detention**
- Supervision ‘Best effort’

**Victims’ rights**
- Right to information

**ToP**
- Transfer of prisoners
  - Framework Decision 2008/909/JHA
    - 27 November 2008
  - Transposition deadline 5 December 2011

**PAS**
- Probation and alternative sanctions
  - Framework Decision 2008/947/JHA
    - 27 November 2008
  - Transposition deadline 6 December 2011

**ESO**
- European Supervision Order
  - Framework Decision 2009/829/JHA
    - 23 October 2009
  - Transposition deadline 11 November 2012

**EIO**
- European Investigation Order
  - Directive 2014/41/EU
    - 3 April 2014
  - Transposition deadline 22 May 2017

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**State of implementation updated as of 1 April 2016 (EJN)**
FRA and its environment

Nat’l Liaison Officers
- 28, respective MS appoints

Management Board
- Planning and Monitoring,
  1/MS + 1CoE + 2 COM

Information networks

Executive Board
- Prepares decisions by MB,
  advises Director

Ad hoc working parties

Fundamental Rights Platform
- Civil society representatives

Scientific Committee
- 11 independent members,
  scientific guidance

Staff
- Around 100 appointed by Director

Director
- implements tasks, manages
  staff, represents externally

Selected through
- open calls for applications

Director ‘in the building’

FRA ‘Working methods’

FRA bodies, networks, and staff

UN
- OHCHR
- ROE – OHCHR
- CDRP Cttee
- UNDP
- UNICEF
- CoE
- ECtHR
- ECSR
- Commissioner
- ECRI
- CEPEJ
- …

EU
- EC DGs
- EP Cttees
- Council
- (FREMP, etc)
- Ombudsman
- EDPS
- (JHA) agencies
- …

National
- NHRIs
- Equality bodies
- Ombuds institutions
- Parliaments
- …
Charter of Fundamental Rights of the EU

I. Dignity (Articles 1-5)
- 1. Human dignity
- 2. Life
- 3. Integrity of the person
- 4. Torture and inhuman and degrading treatment or punishment
- 5. Slavery and forced labour

II. Freedoms (Articles 6-19)
- 6. Liberty and security
- 7. Private and family life
- 8. Personal data
- 9. Marry and found family
- 10. Thought conscience and religion
- 11. Expression and information
- 12. Assembly and association
- 13. Arts and sciences
- 14. Education
- 15. Choose occupation and engage in work
- 16. Conduct a business
- 17. Property
- 18. Asylum
- 19. Removal, expulsion or extradition

III. Equality (Articles 20-26)
- 20. Equality before the law
- 21. Non-discrimination
- 22. Cultural, religious and linguistic diversity
- 23. Equality: men and women
- 24. The child
- 25. Elderly
- 26. Integration of persons with disabilities

IV. Solidarity (Articles 27-38)
- 27. Workers right to information and consultation
- 28. Collective bargaining and action
- 29. Access to placement services
- 30. Unjustified dismissal
- 31. Fair and just working conditions
- 32. Prohibition of child labour and protection of young people at work
- 33. Family and professional life
- 34. Social security and assistance
- 35. Health care
- 36. Access to services of general economic interest

V. Citizens’ rights (Articles 39-46)
- 37. Environmental protection
- 38. Consumer protection
- 39. Vote and stand as candidate to EP
- 40. Vote and stand as candidate at municipal elections
- 41. Good administration
- 42. Access to documents
- 43. European ombudsman
- 44. Petition (EP)
- 45. Movement and residence
- 46. Diplomatic and consular protection

VI. Justice (Articles 47-50)
- 47. Effective remedy and fair trial
- 48. Presumption of innocence and right of defence
- 49. Legality and proportionality of criminal offences and penalties
- 50. Ne bis in idem

VII. General provisions (Articles 51-54)
- 51. Application
- 52. Scope and interpretation
- 53. Level of protection
- 54. Prohibition of abuse of rights
<table>
<thead>
<tr>
<th>Short name</th>
<th>Transfer of prisoners</th>
<th>Probation and alternative sanctions</th>
<th>European Supervision Order (ESO)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of adoption</td>
<td>27 November 2008</td>
<td>27 November 2008</td>
<td>23 October 2009</td>
</tr>
<tr>
<td>Deadline for implementation</td>
<td>5 December 2011</td>
<td>6 December 2011</td>
<td>1 December 2012</td>
</tr>
<tr>
<td>Full name (emphasis added)</td>
<td>“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 Union”</td>
<td>“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”</td>
<td>“on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention”</td>
</tr>
</tbody>
</table>