

Criminal Justice Platform Europe

International Seminar

IMPLEMENTATION OF FRAMEWORK DECISIONS

2008/909/JHA, 2008/947/JHA and 2009/829/JHA – covering:

“The mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty”, “Probation decisions and alternative sanctions” and “Supervision measures as an alternative to provisional detention.”

Introduction

The Criminal Justice Platform Europe (CJPE) comprises – the Confederation of European Probation (CEP), the European Organisation of Prison and Correctional Services (EuroPris) and the European Forum for Restorative Justice (EFRJ). It was launched in 2012 to address issues on the agenda of many European countries – victims, overcrowding in prisons, recidivism and the impact of budget constraints on the criminal justice system.

The Government of the Catalonia Delegation to the European Union hosted a CJPE seminar in Brussels on 3 December 2015 about an update on the implementation of the three Framework Decisions throughout Europe.

The seminar focussed on:

- Status of implementation
- Actual use of the Framework Decisions
- Issues and concerns in the use of the Framework Decisions (FWDs)
- Future expectations.

During the seminar CJPE also gave an overview of their work in 2015 and planning for 2016.

This short summary will be sent to the audience, which included participants from permanent representations, NGOs and officials from the European Commission and Parliament. The speeches from the seminar plus the summary will be placed on the CEP, EuroPris and EFRJ Web Pages.

Welcome

Amadeu Altafaj Tardio, Representative of the Government of Catalonia Delegation to the European Union, welcomed participants and said he was very pleased to host one of the CJPE events especially as today we are facing problems around Europe. It provided a good example on how to be proactive



on very delicate topics. Catalonia is committed to play an active and relevant role in Criminal Justice matters.

John Scott, as Chair of the seminar, apologised that Hans Meurisse was unable to be present and explained the purpose of the event.

The work and priorities of the Criminal Justice Platform Europe

Kirsten Hawlitschek, Executive Director of EuroPris, **Annemieke Wolthuis**, Vice-Chair of EFRJ, and **Willem van der Brugge**, Secretary General of the CEP explained the work of each of their organisations and the role of the CJPE in coordinating work on implementing Framework Decisions.

EUPRIS: has been working on the FWD 909 and has organised a series of expert meetings since 2012, involving the European Commission and EU judicial authorities. It created network opportunities to share information and enhance communication. In 2016 they will collect data on transfers and also on the prison population. A research project on FWD 909 looked into the rehabilitation of offenders, developing an e-learning module (ITA-SP-ROM).

CEP: has mostly focused on the FWD 947, they developed a web tool with country specific information in EU. They also raised awareness in different projects. They brought together experts and are planning a meeting of competent authorities in 2016. The Platform had given high priority to working on the 'radicalisation agenda' and lessons learned about transfer of prisoners and probation cases were relevant.

EFRJ: works to combine the different factors necessary to restorative justice processes. They have focused especially on victims and implementing the EU's Victims' Directive from 2013 to the present. EFRJ thinks that the organisations are stronger together and that communication is a central issue for restorative justice so that officials understand and practitioners incorporate the principles in their work of implementation.

The conclusion expressed by **Annemieke Wolthuis** was 'that improving CJPE is our objective because together we are stronger. The EFRJ believes that the Platform is very important to enhance work with other parts of the system and will improve top-level inter-disciplinary approaches to criminal justice and implementation of directives and decisions.'

Expert Speakers

John Scott, Platform facilitator introduced the two expert speakers, who each delivered substantial speeches (the presentations are available on the Web Pages of the Platform).

Graham Wilkinson, National Offender Management Service, United Kingdom, (**joint Chair Europris Experts Group**), spoke on "*Framework Decision – Prisoner Transfer.*" His presentation highlighted the following points:

- **FWD provides for transfer both with and without the consent of the person concerned.** Persons can be transferred without consent where they are subject to deportation or removal.



- **Transfer has the potential to become a routine** part of the sentence process where prisoners will not be allowed to remain in the sentencing state. But there are issues which hamper the effective implementation of the FWD.
- **Prisoners are not given enough information of the consequences of transfer** although it is stated in the FWD. What do the prisoners want to know? When they are going to be released and why – which prison – which region of the country – proximity to family – rights to challenge the decision or location. The STEPS 2 project is working on developing a prisoner’s handbook.
- **Information** sheets are essential to accompany offenders on transfer to different jurisdictions.
- **Release Date:** a consequence of transfer to a new jurisdiction may be that the final date of release is varied.
- **Certificate:** To achieve effective consultation it is vital to have a conversation with the prisoner *before* the transfer to ensure acceptance. This is especially important when considering the transfer of residents.
- **Specific attention** is needed for the different categories of prisoner – sex offenders, women, disabled etc., to ensure that their needs are met following transfer.
- **Efficiencies:** The FWD should be used to transfer the enforcement of a sentence when the person is already present in his state of nationality instead of seeking extradition under a European Arrest Warrant.
- **Future:** hope that very soon all member states will have the FWD implemented. We hope that the FWD will be incorporated as a part of the routine a part of the normal procedures of each jurisdiction’s prison operations.
- **Important:** to have a shared understanding on what rehabilitation is. The FWD does not provide a definition. .
- **Potential:** The FWD has real potential. It will work. It just will take a little while.

(CASE ILLUSTRATION of the importance of good information: an offender being wheelchair bound was not communicated so no proper facilities were waiting for him.)

Professor Ioan Durnescu, Lecturer at the University of Bucharest, Rumania, spoke on: “*The Status of implementation of Framework Decisions 947 and 829*”. His presentation included the following key points:

Why FWDs were created? Too many foreigner national prisoners - the idea is that the FWDs will help to decrease these numbers, enhance rehabilitation and social order. FWD 829 also protects victims’ interests – FWD 947 emphasises the role of rehabilitation, without defining it.

Comparative Overview of 2 FWD 829 and 947

- 2 FWDs started with the same kind of motivation
- The person can be transferred in instances of community sentences and alternative sanctions AND where supervision is an alternative to provisional detention.
- The 2 FWDs place requirements for working together on the relevant authorities in both the countries involved in the transfer



- Limits of times are considered in both cases
- Competent authorities are identified in each state to oversee the links
- Importance of consultation between the competent authorities – in practice advance consultation does not take place - the states are sending the “papers” without any previous consultation.

Several Projects were mentioned (see Professor Durnescu’s presentation).

A Real Case Example exposed different approaches in dealing with the rehabilitation process between the two countries involved:

- Procedures were unknown and not codified
- Procedure appeared very bureaucratic with built-in delays
- Better exchange of information about probationers is required between the different countries
- Informed consent should be the favoured starting point
- There are too many authorities involved
- FD covers mainly judicial process but not the nature of supervision
- There is an overall poor status of implementation.

Solutions: Professor Durnescu focussed on several points:

- Close cooperation could be achieved by grouping countries into hubs
- More consultation and information sharing
- Upgrade FD in the light of experience
- Expert Groups to ensure there is learning from practice
- Involvement of prosecution authorities
- CEP monitoring system.

Annemieke Wolthuis, Vice-Chair of EFRJ, gave a short presentation on: “Council Framework Decision 2008/947/JHA” which identified that there is an absence of reference to restorative justice in this FWD. She discussed where restorative justice practice might fit into the FWD and proposed the need for a redrafting to incorporate victim issues and add restorative justice practice to the considerations of transfers.

Questions from participants and comments from the panel of experts

Initial questions from the audience covered issues about – how to deal with radicalisation in prisons, how the countries cooperate to develop the FWDs and the provision of information to judges.



The answers of the different organisations' members focused on the risk assessment tools and types of programmes offered. Some of the CJPE's Barcelona Radicalization Conference outcomes were mentioned. Examples of methods for working on extremism and restorative justice were provided: ETA in the Basque country and also in Northern Ireland.

Discussion raised the different levels of alternatives to prisons and prisons conditions across Europe, with judges' doubts about safety and human rights affecting decisions about transfer requests.

Cultural differences also need to be considered. How prisoners are treated in the prisons is also an issue: being alone in a single cell in Croatia may be regarded as harsh, but not in the Netherlands. It was agreed that the role of the prison staff can be even more important than simple square metres.

How is the voice of victims heard in relation to the FWDs? FWDs give very little mention to the victims so this is the major missing part of the Framework Decisions under consideration. Prisoners cannot be transferred because they have to pay a compensation fee to the victim.

It was suggested that the CJPE could contribute to having an agreed social rehabilitation definition between the Member States and continue to work on standards of how staff treat foreign national offenders and prisoners.

The final question was on how technology could help. NOMS in the UK has created an application called 'Tracks' and other applications are in development which could have transferable benefits.

Concluding Remarks

John Scott closed the event with thanks to the Catalanian Delegation for providing support to the Platform and for the excellent meeting facilities of the Delegation. He stressed the valuable financial assistance from the Criminal Justice Programme of the European Commission.

He set out an agenda for the future development of effective implementation of the Framework Decisions – not least because there is no room for complacency about the progress on implementation. He committed the CJPE to support the expert groups by a focus on:

1. Ensuring that victims' interests will be taken into account
2. Highlighting the role of restorative justice in potential transfers
3. Developing hubs of relevant countries where there are highest levels of exchange or transfers
4. Building improved and standardised processes particularly in the information that accompanies offenders as they transfer
5. Agreeing a practical definition of 'social rehabilitation' and 'reintegration'
6. Creating standards of information so evaluation is consistent and decisions are based upon quality information
7. Improving points of contact so trust develops between responsible authorities and better working relationships can raise standards of communication and exchange
8. Continuing commitment to bring together the experts so practice informs policy.

He closed the event by making reference to the topical concept of being 'shoulder to shoulder' on matters relating to security. His challenge was to take the concept and apply it to working together



on matters of practical human rights and the dignity of foreign national offenders – closing gaps and working together on the justice issues was vital work at a time of heightened threat and insecurity. How we treat such offenders is a litmus test of our organisations and judicial institutions.

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