

RESEARCH ARTICLE

Open Access

MUTUAL RECOGNITION IN PRISON RULES AND PRE -TRIAL DETENTION AND DETENTION IN EU

Adriana Iuliana Stancu

Dunarea de Jos" University of Galati, Romania

ORCID ID: - <https://orcid.org/0009-0008-5994-3018>

Abstract

The purpose of this study is to highlight the important aspects on the creation of a criminal justice section inside prisons, as well as the creation of minimum requirements for jail and detention settings and a uniform set of rights for all EU inmates. The Council of Europe believes that efforts should be taken to improve mutual trust and to more effectively implement the concept of mutual recognition in custody, as stated in the Stockholm Program, which calls for the Council to address detention and related concerns. Among the instruments of mutual recognition of terms of incarceration that may be affected we mention the European Arrest Warrant issued by the Council, the transfer of prisoners, the mutual recognition of alternative sanctions and judicial proceedings, and the European supervision order. Following the analysis and empirical research, the paper summarizes that without mutual trust in detention, the European Union's mutual recognition instruments affecting detention will not work properly, as one Member State is unwilling to recognize and implement a decision taken by the authorities of another Member State. Without greater efforts to improve detention conditions and promote alternatives to detention, it may be difficult to develop closer judicial cooperation between Member States.

Keywords Prison rules; mutual recognition; detention; pre-trial detention; responsibility.

INTRODUCTION

Over the years, the European Parliament has called on the Council to act on various issues of detention. The European Parliament's decision on the Stockholm Program calls for the establishment of a criminal justice area in prison, the development of, among other things, minimum standards of prison and detention conditions and a common set of rights for prisoners in the EU. This is reiterated in the European Parliament's February 2011 written statement on the violation of the fundamental rights of prisoners in the European Union.

The Commission wishes to explore the extent to which the issue of detention will affect mutual

trust and ultimately mutual recognition and judicial cooperation within the European Union. Although detention and prison management are the responsibility of Member States, the Commission is concerned with this issue because of the fundamental importance of mutual recognition of judgments in the areas of freedom, security, and justice, in compliance with the basic Principles (Ljungquist 2006), such as: respect the human rights of all persons deprived of their liberty, persons deprived of liberty retain all rights not revoked by law after imprisonment or pre-trial detention, restrictions imposed on persons deprived of their liberty should be reduced to what

is strictly necessary and consistent with their stated legal objectives, detention conditions that violate human rights cannot be justified by lack of access, life in prison should be as close as possible to the positive aspects of life outside the penitentiary, each period of detention should be administered in a manner that facilitates the reintegration of the person sentenced to imprisonment into free society, cooperation with external social services and participation of civil society in prison life should be encouraged as much as possible, correctional officers perform an important community service and their work, training and working conditions should enable them to provide a high level of care to prisoners, and all detainees should be regularly monitored by the government by an independent agency.

The Perception of the situation in the EU

For mutual recognition to work effectively, there must be a common basis of trust between judicial authorities. Member States should know each other's criminal justice systems better.

In its ruling on the "mole book" to enhance the due process rights of criminal suspects, the Panel noted that the length of time a person is held in pre-trial and post-trial detention varies greatly from Member to Member. "Pre-trial detention is harmful to the individual, can undermine judicial cooperation between Member States and does not reflect the importance of the European Union". Detention is not intended here for purposes other than criminal convictions pursuant to Article 5(1)(a), (b) and (c) ECHR. (e.g. arresting migrants) is also considered.

Measures taken

The Council asked the Council to present a Green Paper on pre-trial detention. This document, which is part of the procedural rights package, is the Commission's response to the Council's request.

The Green Paper covers the relationship between

detention conditions and the European Arrest Warrant, as well as pre-trial detention, and opens a broad public consultation based on the ten questions set out in the document.

Arrest may be ordered under the obligation to respect the EHR, a right to liberty closely related to the presumption of innocence (Article 5). Article 48(1) of the EU Charter states that "any person charged with a criminal offense shall be presumed innocent until proven guilty by law." Article 6(2) ECHR and ICCPR17 contain provisions on the presumption of guiltlessness. According to the Green Book, pre-trial detention lasts until sentencing. Pre-trial detention is an extraordinary measure in the judicial system of all member states. It is used only when all other measures are considered insufficient. In some European systems, pretrial detention is even defined by a constitutional provision that supports freedom with the presumption of innocence. It limits the circumstances in which judicial pretrial detention is authorized and specifies specific criteria and procedures for its use. For example, it should be used after a court determines that defendants pose a flight risk, endanger the safety of the public, victims or witnesses, or interfere with investigations. Arrested defendants must be supervised in all cases and have the right to be released on trial. Arrested accused should be a priority in the trial. The principle of equality in criminal proceedings requires that coercive measures, such as pre-trial detention or alternatives to such detention, be used only when and only if necessary. It is the responsibility of the national judicial authorities to ensure that the pre-trial detention of the accused is not prolonged, and that the execution of the requests is based on the principle of innocence and the right to liberty, as well as the prosecution.

The length of time a person is held in pre-trial detention varies from one Member State to

another. ECHH jurisprudence establishes that pre-trial detention should be treated as an extraordinary measure and non-custodial measures should be used whenever possible. But in practice, foreigners are often disadvantaged as bailiffs because they are considered a greater flight risk than national defendants. Consequently, the other defendants were sentenced to prison and later acquitted for lack of jurisdiction. Some countries have no legal limits on pretrial detention. In some cases, a person can be sentenced to 4 years in prison. Pre-trial detention is personally harmful and in some Member States long-term detention can undermine mutual trust.

The judicial system must use such a coercive measure as an alternative to pre-trial detention if it is sufficient to eliminate the risk of escape or recidivism. These authorities can issue an MEA to secure the return of a person wanted by a court who has been sentenced to prison and allowed to return to their country of origin. This option could allow judges to use pretrial detention in a more balanced way to release people accused of crimes outside their jurisdiction and reduce pretrial detention periods (Christophers, Alite 2023).

Finally, Article 47 of the EU Charter and the Convention to ensure that everyone has the right to be tried or released in an ongoing trial and that such release can be accompanied by external guarantees.

The question is whether a judicial review of the reasons for pre-trial detention and/or a legal maximum period for pre-trial detention would increase trust among member states.

The right to a speedy trial and pre-trial release (unless there are good reasons to keep a person in pre-trial detention) is an important right. Some Member States have legal maximum conditions for pre-trial detention. Under Article 5 of the ICCPR, pre-trial detention is subject to judicial review and should be interpreted as a recurring obligation on

the part of investigating and prosecuting authorities to justify the continued pre-trial detention of a suspect.

- Council of Europe Recommendation 2006-1322 on pre-trial detention establishes the conditions for pre-trial detention and protection against abuse. Recommends measures to periodically review the reasons for preventive arrest by the court.

The Commission wants to determine whether legally enforceable rules, such as EU minimum rules on the periodic review of grounds for detention, can improve mutual trust.

Matters related to detention are within the competence of Member States, regardless of whether they concern pre-trial detainees or detainees. However, there are reasons why the European Union should consider these issues regardless of the principle of subsidiarity.

The question of accession is within the competence of the European Union because, firstly, it represents a relevant aspect of rights that must be protected in order to promote mutual trust and ensure the proper functioning of mutual recognition instruments and, secondly, it supports certain values of European Union.

To promote mutual trust, the Council's priorities in the criminal justice system are to strengthen procedural rights through minimum rules for those suspected or accused of crimes. A minimum standard of protection of individual rights will be a necessary balance for judicial cooperation measures that not only benefit the people of the Union, but also strengthen the powers of prosecutors, courts and investigators and increase mutual trust.

To this end, the Council has developed a series of measures on the procedural rights of suspected and accused persons, which will help to achieve the necessary mutual trust between judicial officials,

considering the differences between the customs and legal systems of the Member States.

The Council has already underlined the importance of respecting fundamental rights in the EU to help foster mutual trust between Member States. The lack of confidence in the effectiveness of fundamental rights in the implementation of Union law in the member states will prevent the operation and strengthening of cooperation instruments in freedom, security and justice.

The Charter of Fundamental Rights of the European Union (EU Charter) sets the standard for the implementation of EU law by all member states. The European Court of Human Rights (ECHR) has ruled that unacceptable conditions of detention may constitute a violation of Article 3 of the European Convention on Human Rights (ECHR). Article 4 of the EU Treaty is drafted in the same way as Article 3 of the ECHR, and the two provisions are identical and co-extensive. Article 19(2) of the UN Charter also states that no one may be extradited to a country where he would be at risk of inhuman or degrading treatment (Litton, Wharton 2016).

Although criminal laws and procedures in all member states are subject to ECHR standards, there are doubts when using the EU law, they must follow the EU regulation on how the standards in EU are applied.

Proposals include the right to be heard and explained in criminal proceedings (2010/64/2010B adopted in October 2010), the right to information in criminal proceedings, access to a lawyer and the right to communicate in custody (Coyle 2005), vulnerable persons, suspects and will include defence and access to legal aid for the accused - "A strategy for the effective implementation of the Charter of Fundamental Rights by the European Union" - COM (2010) 573.

CONCLUSIONS

Detention conditions can directly affect the operation of the principle of mutual recognition of court decisions. Detainees and parolees are subject to the same terms of detention. Allegations of prison overcrowding and poor treatment of prisoners could undermine the confidence needed to continue judicial cooperation within the European Union.

The principle of mutual recognition is based on the idea of mutual trust between member states. Court decisions must be recognized and enforced as equivalent throughout the Union, regardless of where the decision was made. This assumes that criminal justice systems in the EU are at least equal, if not uniform (Leech 2024).

Judgments are usually enforced by the judges of the executing state. These judges must be satisfied that the initial decision was made fairly (i.e. the person's rights were not violated when the decision was made) and that the person's rights will be fully respected when the person is returned to another Member State.

Without mutual trust in detention, the European Union's mutual recognition instruments affecting detention will not work properly, as one Member State is unwilling to recognize and implement a decision taken by the authorities of another Member State. Without greater efforts to improve detention conditions and promote alternatives to detention, it may be difficult to develop closer judicial cooperation between Member States.

Several instruments of mutual recognition of conditions of detention may be affected: the instruments concerned are the Council's European Arrest Warrant, the transfer of detainees, the mutual recognition of alternative sanctions and judicial procedures and the European supervision order.

Acknowledgement

The paper was achieved within the project unfolded by “Dunărea de Jos” University of Galati entitled: “Developments and Perspectives in Contemporary Law”, financing Contract no RF2469/31.05.2024.

REFERENCES

1. Christophers, N. & Alite, J. (2023). Prison Rules. Independently published, pp. 87-88.
2. Coyle, A. (2005). Understanding Prisons: Key Issues in Policy and Practice. Maidenhead: Open Univ Pr, pp. 202-207.
3. Leech, M. (2024). The Prisons Handbook 2024. UK: prisons.org.uk, pp. 71-77.
4. Ljungquist, T. (2006). Mutual Recognition of Non-custodial Pre-trial Supervision Measures in the European Union. *Revue Internationale de droit pénal*, Volume 77, Issue 1-2, pp. 169-175.
5. Lytton, C. & Warton, J. (2016). Prisons & Prisoners. South Carolina: CreateSpace Independent Publishing Platform, pp. 89-92.