European detention norms and standards: a policy-making perspective

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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

- CPT
  - Stronger & weaker members
  - Increased political influence!?

  - Counterbalancing Western perspective on detention
  - Driven by “policy entrepreneurs”
  - Consensus of 47 member states
  - Currently: revision of the commentary only

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

-> Mutually reinforcing
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?
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