

FACTSHEET

Increasing the cooperation between judiciary and NPMs: An opportunity to strengthen fundamental rights in the implementation of EU law

The Ludwig Boltzmann Institute of Human Rights (BIM) in Vienna and the Academy of European Law (ERA) in Trier are implementing an EU-funded project from October 2015 to March 2017 to support judicial cooperation in criminal matters in the European Union.

The main objectives of the project is to strengthen cooperation between the judiciary and national mechanisms for the prevention of torture and ill-treatment in the EU as well, as to contribute to the correct and consistent implementation of the European Arrest Warrant (EAW) and other mutual recognition instruments relating to detention in full accordance with fundamental rights.

Background

Judicial cooperation in criminal matters within the EU is based on the principle of mutual recognition of judicial decisions. The EAW and the ‘common rules on detention’, which include three mutual recognition Framework Decisions¹, were created to improve judicial cooperation in the EU. These laws enable prison sentences, probation decisions or alternative sanctions and pre-trial supervision measures to be executed in an EU country other than the one in which the person is sentenced or awaiting trial, such as the country of nationality, residence or another EU country with which the person has close ties.²

Their implementation is based on the principle of mutual trust, which implies that conditions of detention and procedural safeguards are equivalent in all EU Member States. In reality, however, large discrepancies exist, which might raise significant fundamental rights concerns. At the same time, the poor implementation of the Framework Decisions has been criticised by the European Commission, which highlighted the need for improvements and harmonisation among Member States.³

With regard to detention conditions, the Commission’s Green Paper on Detention stressed that “Detention conditions can have a direct impact on the smooth functioning of the principle of mutual recognition of judicial decisions”, adding that “prison overcrowding and allegations of poor treatment of detainees may undermine the trust that is necessary to underpin judicial cooperation within the European Union.”⁴ In addition, information on prison conditions in the EU should be more easily accessible. It is indeed crucial for surrendering States in deciding whether to transfer a prisoner or not as

¹ Text of the three laws here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2008F0909:20090328:en:PDF> ; <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52006PC0468> ; <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008F0947>

² See EU Press Release, 5 Feb. 14, http://europa.eu/rapid/press-release_IP-14-100_en.htm

³ EC Report to the EU Parliament and the Council on the implementation by Member States of FDs 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention (COM (2014) 57 final) 5 Feb. 14.

⁴ Green Paper on Detention, p. 9.

it addresses the question of refoulement. There seem currently to be difficulties in providing courts with sufficient evidence.

With regard to some of these implementation challenges, National Preventive Mechanisms (NPMs) could play an important role: the Optional Protocol to the UN Convention against Torture (OPCAT) – ratified by 24 of the 28 EU Member States - obliges State Parties to set up a system of preventive monitoring of places of detention, providing them with systematic observations and recommendations on the protection of detainees against torture and ill-treatment.

Currently 24 NPMs carry out monitoring visits to places of detention in the EU and thus possess a considerable expertise about the treatment and conditions of detention in their countries. At the same time, research recently conducted by the BIM shows that there is hardly any interaction between the judiciary and NPMs on the national level and even less so across Europe.⁵ The expertise and first-hand knowledge of NPMs as main bodies monitoring the treatment in detention thus remains unused in the application and monitoring of EU law implementation.

The project therefore aims to fill this gap by increasing the awareness of the judiciary of NPMs and the relevance of the latter in the implementation of the EAW and common rules related to detention. The project also intends to increase coordination among these stakeholders.

Activities

The project is divided into three phases. In the first phase, a comprehensive desk study will be carried out on the implementation of the EAW and Framework Decisions on detention, potential fundamental rights concerns as well as the cooperation between the judiciary and NPMs in extradition procedures.

In a second phase, two workshops will be organised: one, in Trier, will involve judges from EU Member States, and one in Vienna, will be designed for EU NPMs. The workshops will provide a platform for representatives of NPMs and the judiciary to gain awareness of each other's roles, and to think of ways to develop modalities for a dialogue in the application of the EAW and other Framework Decisions related to detention.

The final phase will include a conference in Vienna with NPMs, judges as well as relevant stakeholders, with the purpose to identify concrete ways to strengthen cooperation. A study will finally be published on judicial cooperation and the role of NPMs to strengthen the consistent and correct implementation of EU law in criminal matters. It will comprise good practice examples and recommendations identified during research the consultations on how to improve cooperation between judges and NPMs for a more consistent implementation of EU law in line with fundamental rights standards, targeting judiciary, NPMs and EU institutions.

⁵ DG Justice Project on “strengthening the implementation and follow up of torture monitoring bodies recommendations in the EU” carried out with the Human Rights Implementation Centre (Bristol Univ.): <http://bim.lbg.ac.at/en/strengthening-effective-implementation-and-follow-recommendations-torture-monitoring-bodies-european-union>

Partners

The Ludwig Boltzmann Institute of Human Rights

The Ludwig Boltzmann Institute of Human Rights (BIM) was established in Vienna, Austria, in 1992 as an independent research centre with the aim of contributing to the scientific discourse of human rights. The team *Human Dignity and Public Security* at the Institute is composed of experts on the prevention of torture and ill-treatment, and has supported the mandate of the UN Special Rapporteur on Torture, Manfred Nowak, from 2004 to 2010.

The team has conducted extensive research on torture and ill-treatment and inter alia published a comprehensive Commentary to the UN Convention against Torture. Since the end of the UN Special Rapporteur's mandate, it has implemented numerous projects on the fight against impunity by criminalising, investigating and documenting torture, reinforcing safeguards, as well as by establishing and strengthening NPMs in many countries. Furthermore, a visiting commission of the Austrian NPM is coordinated in the team. From 2014 to 2015, the team implemented an EU-wide research project aiming at enhancing the impact of NPMs by strengthening the effective implementation and follow-up of their recommendations.

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The Academy of European Law

The Academy of European Law (ERA) is a non-profit public foundation that provides training in EU law to legal practitioners. Established in 1992 on the basis of a European Parliament recommendation that the European Commission invest in a centre for the continuing education of lawyers in order to improve the application of European law, ERA organises conferences and seminars around Europe and at its conference centre in Trier for the judiciary and legal professionals, amongst others. Moreover, the Academy offers an online training programme, which includes a broad range of courses and e-presentations.

The European Criminal Law Section within ERA deals with the topic of detention and improving conditions, the relevant Framework Decisions, as well as the EAW. The Section has already completed two successful EU co-financed project series on improving conditions and finding alternatives to detention, in which several NPMs were also involved as project partners and were able to contribute to the content of the seminars. Moreover, the functioning of the OPCAT was also analysed during these events, amongst others. The third project series of its kind will commence in 2016.

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