

A “Peculiar” Way of Taking into Account Convictions in Member States: The Spanish Case

Marta Muñoz de Morales Romero
Universidad de Castilla-La Mancha
(Spain)

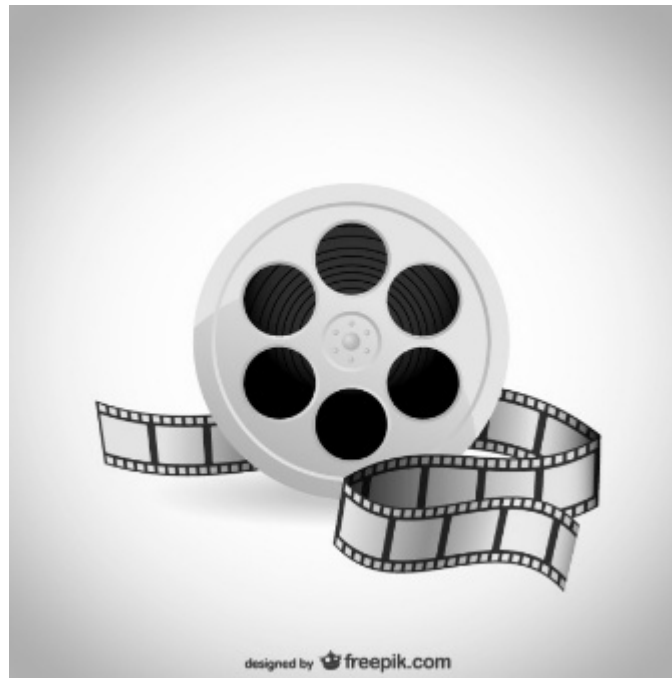
Remark

- Not directly
 - prison population and prison overcrowding
 - alternatives to detention
- Supranational legal instruments and case-law
 - FWD on taking account of criminal convictions in Member States (2008)
 - Spanish implementation (November 2014)
 - *Picabea case* (January 2015)



Taking into account a
previous criminal
conviction

Time prison served in
another EU country is
credited towards the
sentence to be served in
another Member State



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Picabea case (1)



Extradited



2001



- Conviction of an ETA man, Mr. Picabea: *association de malfaiteurs*
- Penalty totally executed

- Conviction in Spain: King Juan Carlos I suffered an attempt in Mallorca without he suffered some damage.
- Penalty partially executed.

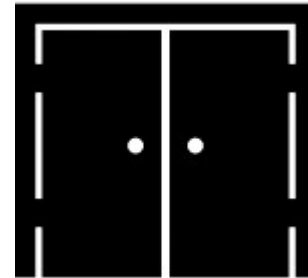
Picabea case (2)

- Cumulation of convictions (Art. 76 SCC)

**Taking into account the
French conviction**



**Not taking into account the
French conviction**



**Spanish Supreme
Court position**

Mr. Picabea seemed to have everything on his side (1)

- The French conviction complied with the requirements of Art. 76 SCC.
- Recent ruling: STS 184/2014, 13 March (*Urrusolo case*)
 - Identical facts
 - A fully executed penalty imposed in France
 - Decision: Mr. Urrusolo was released, because time already served in France has to be credited towards the sentence to be served in Spain.
 - Difference with the *Picabea case*: There was not implementation of the FWD

Mr. Picabea seemed to have everything on his side (2)

- Taking into account the French conviction was supposed to be an obligation arising from the *Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings*

Framework decision of taking account of criminal convictions in Member States (1)

- Purpose: to establish a minimum obligation for Member States to take into account previous convictions handed down for different facts in other Member States.
 - “Conviction”: any final decision of a criminal court establishing guilt of a criminal offence.
 - The effects of a previous conviction are the same as those the national laws provide to a domestic conviction.

Framework decision of taking account of criminal convictions in Member States (3)

- How is such a minimum obligation translated “on the ground”?

Pre-trial stage: applicable rules of procedures, definition of the offence, provisional detention



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graph TD; A[Pre-trial stage: applicable rules of procedures, definition of the offence, provisional detention] --> B[Trial stage: type of court having jurisdiction, the nature and quantum of the penalty (recidivism)]; B --> C[Time of execution of the sentence: early releases, suspension of the execution of the penalty, cumulation or confusion with previous penalties, etc.];
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Trial stage: type of court having jurisdiction, the nature and quantum of the penalty (recidivism)

Time of execution of the sentence: early releases, suspension of the execution of the penalty, cumulation or confusion with previous penalties, etc.

- Is it mandatory to take into account a previous conviction in any case?
- No, it is not.

Art. 3.5 FWD is the key



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Why is Art. 3.5 FWD so important?

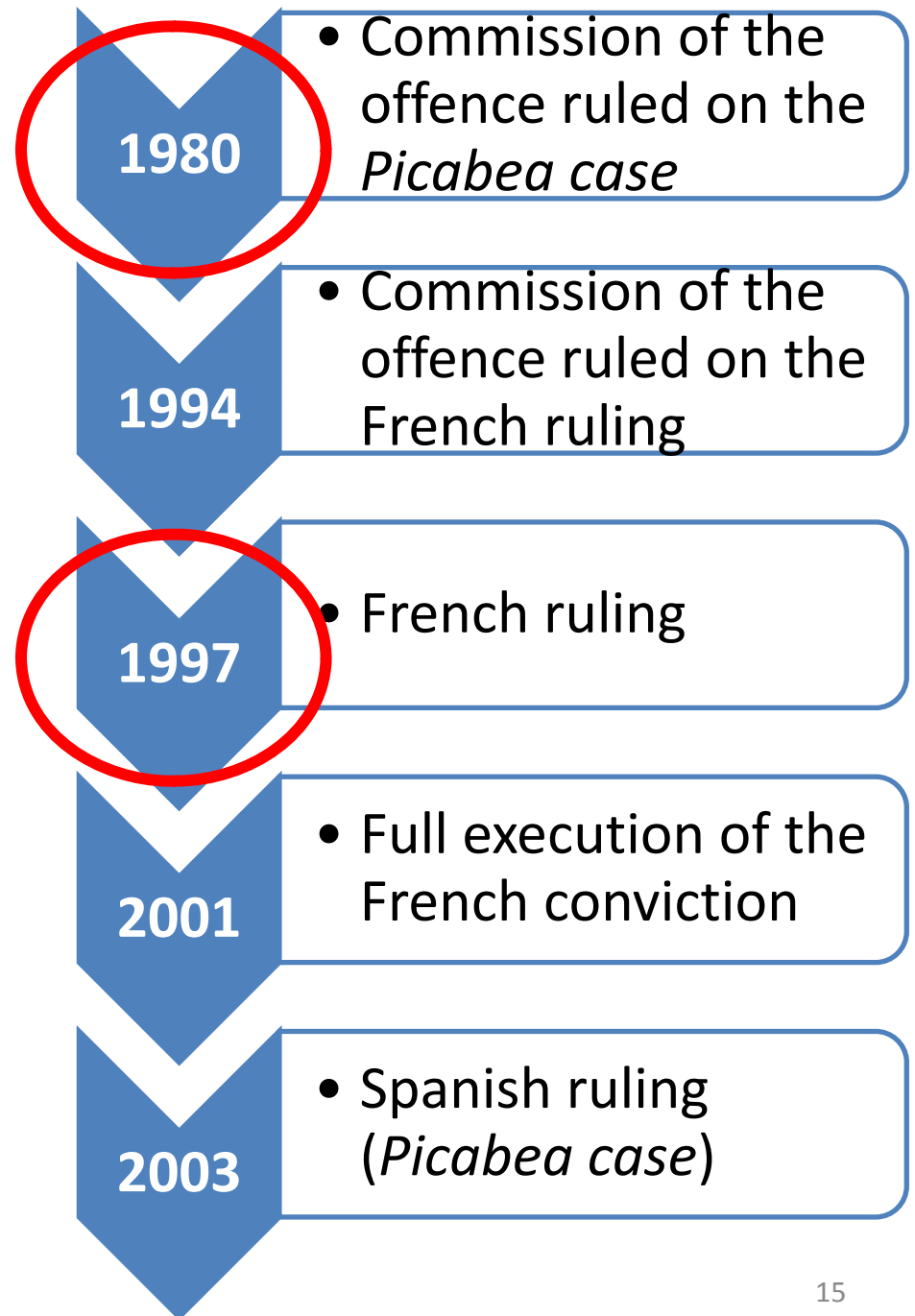
- Art. 3.5 FD leaves room for discretion to Member States in implementing the obligation of taking into account a criminal conviction handed down by another Member State in cases of cumulation.
- The Spanish legislator decided that there is no obligation in such cases (7/2014 Act, 12th November).

What does Art. 3.5 FWD state?

- Does this provision explicitly state that it is not mandatory for Member States to take into account previous convictions in cases of cumulation?
- No, it does not!

No obligation (Art. 3.5 FWD)

“If the offence for which the new proceedings being conducted was committed before the previous conviction had been handed down or fully executed, there would be no obligation for Member States to apply their national rules on imposing sentences, where the application of those rules to foreign convictions would limit the judge in imposing a sentence in the new proceedings”.



No obligation (Art. 3.5 FD)

- If the offence for which the new proceedings being conducted was committed before the previous conviction had been handed down or fully executed, there would be no obligation for Member States to apply their national rules on imposing sentences,

where the application of those rules to foreign convictions would limit the judge in imposing a sentence in the new proceedings.

What cases are these?

- Cases where under domestic law the penalty pronounced in an earlier conviction is in specified circumstances deducted when calculating the penalty to impose in new proceedings
 - i.e. The Netherlands: If in Member State A a penalty of 5 years has been imposed in a previous conviction, and NL in a subsequent case as a starting point would impose 5 years, the full application of the principle of assimilation in Article 3(1) would imply that no penalty could be imposed in the new proceedings.

Does it happens in the *Picabea case*?

Does the application of rules on cumulation to the French conviction limit the Spanish judge in imposing a sentence in a new proceeding?

No, I do not think so!

- It is not a new criminal proceeding in which the Spanish judge has to impose a new sentence!
- The sentence was indeed imposed in 2003.
- Maximum prison time Mr. Picabea shall serve once both convictions were to be cumulated.
- A probable misunderstood of limitation set up by Art. 3.5 FWD = an incorrect implementation of the FWD
- Why did not it refer a preliminary ruling before the ECJ?

What is behind the *Picabea* case?

- A positive effect for
 - An ETA man
 - Recognition means release
 - Other ETA prisoners could be eligible for release.
- Although the limitation is also applicable to no matters what kind of criminal!

In Spain ...

- No recognition of effects in cases of cumulation
- No recognition of effects where the sentenced person would benefit!

Thank you so much!