

***Council Framework Decision
2008/909/JHA. Custodial sentences.
Sentencing equivalence. Execution***

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I. General Aspects

- ❑ The European Convention on the International Validity of Criminal Judgments of 28 May 1970;
- ❑ The European Convention on the transfer of sentenced persons of 21 March 1983 ***and*** the Additional Protocol of 1997.

I. General Aspects

- **1983 Convention on the Transfer of Sentenced Person:**
 - only state of nationality, with the ***person's consent*** and the ones of the states involved;
- **Additional Protocol of 18 December 1997** – without the person's consent (exception).

I. General Aspects

- ❑ **Tampere Meeting** – endorsing the principle of mutual recognition of final sentences involving deprivation of liberty;
- ❑ **Hague Programme** – enforcing final custodial sentences;
- ❑ **Conclusions**: a modern mechanism was needed.

II. FD 2008/909/JHA

□ Article 29. Implementation 5
December 2011

□ Romania: late December 2013

*Law no. 300 of 2013, modified the
special law on international cooperation
in criminal matters – Law no. 302 of
2004*

II. FD 2008/909/JHA

- ❑ the need to provide the sentenced person with adequate safeguards
- ❑ respect of fundamental rights and the general principles (Article 6 TEU and in particular the Charter of Fundamental Rights in the European Union)
- ❑ Article 1 – Purpose and Scope – *to facilitate the social rehabilitation of the sentenced person*

III. Adapting the custodial sentence

Article 8

□ **Incompatibility in case of duration**

– possibility to adapt only where that sentence exceeds the maximum penalty provided for similar offences under national Law

*- **Adapted sentence:** no less than the maximum penalty provided*

III. Adapting the custodial sentence

□ ***Incompatibility in case of nature of the sanction***

- adapt it to punishments or measures provided in national law for similar offences*
- no aggravation of the sentences passed in the issuing state in terms of nature and Duration*
- no conversion into a pecuniary punishment*

IV. Execution. Article 17

(1) The enforcement (..) shall be governed by the law of the executing State. The authorities of the executing State alone shall, subject to paragraph 2 and 3, be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release.

IV. Execution. Article 17

Para. 2: deduction of the full period of deprivation of liberty already served in connection with the sentence

Para. 3: executing State shall, upon request, inform the competent authorities of the issuing state of the applicable provision on possible early or conditional release

IV. Execution. Article 17

Para. 4: Member State may provide that any decision on early or conditional release may take account of those provisions of national law, indicated by the issuing State, under which the person is entitled to early or conditional release at a specified point in time.

V. Romanian Experience

Article 144 Law no. 302

- Translation of Article 17 para. 1 and 2
- No reference to the national legislation of the issuing State on early or conditional release

V. Romanian Experience

Romanian High Court of Cassation and Justice. Special Panel for preliminary rulings to settle legal issues

Decision no. 15/ 22 May 2015

V. Romanian Experience

After the transfer of the person in Romania, the part of the sentence term that may be deemed, according to law of the issuing state, as served due to the work performed and the good behavior of the person shall not be deducted from the sentence executed in Romania.

VI. ECHR PERSPECTIVE

Szabo vs. Sweden, 2006

- ❑ Hungarian national sentenced to 10 years in Sweden
- ❑ Transferred to Hungary (without his consent)
- ❑ Early release: Sweden 3/4, Hungary 4/5, a difference of 16 months “bonus” in Hungary

VI. ECHR PERSPECTIVE

- ☐ **The possibility of a longer *de facto period* of imprisonment in an administering state did not itself render the deprivation of liberty arbitrary (and thus in contravention of Article 5 ECHR) as long as the sentence to be served did not exceed the sentence imposed by a court in the original criminal proceedings.**

VI. ECHR PERSPECTIVE

- Still, the Court did not exclude the possibility that a flagrantly longer de facto term of imprisonment in the executing state to give raise to an issue under Article 5**
- Regarding the case an increase of 20% was not disproportionate**

VI. ECHR PERSPECTIVE

Flagrantly – seems to be defined using a test based on the principle of proportionality between the actual sentence to be served and under the conditional release program in the executing state and that which would have been served under the conditional release program of the issuing state.

VII. ECJ PERSPECTIVE

- Request for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 3 December 2014 —
Criminal proceedings against Atanas Ognyanov
- **Case C-554/14**

VII. ECJ PERSPECTIVE

☐ First question

Does the FD preclude the executing State, in the course of the transfer procedure, from reducing the duration of the sentence of deprivation of liberty imposed by the issuing State, on account of work undertaken while that sentence was being served in the issuing State, as follows

VII. ECJ PERSPECTIVE

A. Reduction of sentence according to Article 17 (1): is the law of the executing State on the enforcement of the sentence to be applied even at the stage of the transfer procedure in respect of matters (namely work undertaken in prison in the issuing State) which occurred while the sentenced person was under the jurisdiction of the issuing State?

VII. ECJ PERSPECTIVE

B. Reduction according to Article 17 (2): does that provision permit the deduction of a period that is longer than the period of deprivation of liberty determined in accordance with the law of the issuing State, where the law of the executing State is applied and, as a result, a fresh legal assessment is made of matters which occurred in the issuing State (namely work undertaken in prison in the issuing State)?

VII. ECJ PERSPECTIVE

☐ Second question

Is the issuing State required to be notified if it has made a specific request to that effect, and is the transfer procedure to be discontinued if the issuing State objects?

What should the nature of that notification be: should it be in general and abstract terms as regards the applicable law, or should it relate to the specific reduction in sentence which the court will impose on a particular sentenced person?

VII. ECJ PERSPECTIVE

□ Supplementary question

In the event that the Court should rule that the provisions of Article 17(1) and (2) preclude a reduction of sentence by the executing State on the basis of its domestic law (on account of work undertaken in the issuing State), is the national court's decision nevertheless to apply its national law, owing to the fact that it is more favorable than Article 17, compatible with EU law?