

TRANSFER OF PRISONERS FROM SPAIN TO UK

Transnational co-operation in criminal matters

The setting up of a unified criminal law system has always been a subject pending consideration by the European Union. The power to regulate criminal matters has traditionally been considered to be at the core of national sovereignty, and the Member States have been reluctantly toying with the idea of transferring it to the supranational level for years. So far, substantive criminal law has proved impossible to unify. Nonetheless, its procedural aspects have undergone a progressive homogenisation, especially in respect of judicial and police cooperation.

Judicial cooperation in criminal matters is currently based upon the principle of mutual recognition of judgments and judicial decisions by individual EU member states. It was first introduced by the Maastricht Treaty¹ in 1992, and later reinforced by the Lisbon Treaty² in 2007 through the creation of the Area of Freedom, Security and Justice. The creation of the European Arrest Warrant,³ Eurojust⁴ and Europol⁵ are all cause for optimism; and the increasing relevance of international crime also suggests that judicial cooperation will not cease to be reinforced and strengthened.

The UK and the Council Framework Decision on the recognition of custodial sentences

This eagerness to cooperate has had a deep impact on citizens of the Member States, as it has triggered the adoption of the Council Framework Decision on the recognition of custodial sentences in 2008.⁶ According to its provisions, the enforcement of a sentence may be transferred to another Member State providing that certain requirements are met. And of course, on many occasions this involves the international transfer of sentenced prisoners.

The United Kingdom's legislature effectively implemented the Framework Decision through the amendment of the Repatriation of Prisoners Act. Thanks to its provisions, many British citizens sentenced to a term of imprisonment abroad have been given the opportunity to be transferred, from the countries where they were convicted and imprisoned, back to the UK to serve the rest of their sentence in their own home country.

According to Lord McNally, in 2010 only 89 prisoners were repatriated to England and Wales to continue serving sentences imposed abroad.⁷ The hope and strength to continue brought to the families of those offenders, though, cannot be measured in numbers. The possibility of enjoying visitation rights without the need to first travel abroad, the chance to see a loved one every week rather than having to wait several months, saving travel expenses on a bus ticket where

¹ Signed on 1992, entered into force 1993.

² Signed on 13 December 2007 and entered into force on 1 December 2009.

³ <http://aei.pitt.edu/6476/1/1096.pdf>

⁴ Council Decision 2002/187/JHA on setting up Eurojust, as amended by Council Decision 2003/659/JHA, and Council Decision 2009/426/JHA of 16 December 2008.

⁵ http://www.europarl.europa.eu/hearings/20070410/libe/bruggeman_en.pdf

⁶ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty.

⁷ Answer to a Parliamentary Question, Lord McNally, House of Lords, 15 March 2011

previously much more had to be spent on plane tickets. Getting transferred to the UK means much more than moving a few miles. It means bringing someone closer to home.

Who can apply for a transfer?

In order to be eligible for transfer, applicants have to be British citizens or offenders with close family ties to the UK (e.g. permanent residence). The sentences being served must be imposed by final judgment, meaning that there is no room for any appeal to be lodged; and it is normally required that six months of the sentence be left to serve when the application is made. In addition, the offence for which the offender was convicted abroad must also be a criminal offence in the UK.

Prisoners awaiting trial or offenders undergoing an appeal process are not eligible; nor are those offenders with pending fines or non-custodial sentences to be served.

How can we help?

Once an application is received by the Cross Border Transfer Section the British authorities will assume control of proceedings. However, the entire procedure prior to the application being referred to the British authorities is a matter for the sentencing member state.

In 2014 there were approximately 130 British prisoners serving sentences in Spanish prisons.⁸ As previously stated, British authorities may intervene in their favour once the Cross Border Transfer Section has received the application, but not before. All the preliminary steps must be completed by the Spanish authorities. Therefore, a good knowledge of the Spain's **penal provisions is vital** to ensure a successful application.

What is more, there are no time limits for the processing of applications. Unless these are managed efficiently, a relatively simple procedure could turn into a nightmare of bureaucracy and delay.

Scornik Gerstein LLP has a highly committed team of Spanish criminal lawyers with longstanding experience in this particularly tricky area of law. Should you wish us to consider the merits of your extradition case on a complimentary basis, please do not hesitate to [contact us](#).

⁸ <http://www.thelocal.es/20131213/brits-and-americans-opt-for-spanish-jails> and http://www.gencat.cat/justicia/estadistiques_serveis_penitenciaris/8_pob.html.