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EUROPEAN COMMITTEE ON CRIME PROBLEMS

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**Committee of Experts on the Operation
of European Conventions in the Penal Field
(PC-OC)**

41st meeting

Strasbourg, 25–28 September 2000

THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS

- UNDUE DELAYS -

**Report presented by
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At the 40th meeting of the PC-OC, I expressed the opinion that the most obvious problem in the practical application of the Convention was the delays in the transfer proceeding. After the meeting of the PC-OC, the Bureau asked me to prepare a paper for the next meeting that would expand on the issue of undue delays in transferring sentenced persons under the Convention.

The following is based on experience with the Convention and its use in Norway, as well as information available from previous meetings.

Preconditions: I have based this analysis on the presumption that all requests are to be answered, as a matter of courtesy.

Delays in the initial phase the procedures: Article 3 (1) (b) states that in order for a transfer to take place, the judgement must be final. In my opinion, this should not preclude the gathering of necessary information before the final judgement. There should be no reason why the process of gathering additional information cannot start while the inmate is still remanded in custody, especially if the inmate is on remand pending an appeal.

In Norway, the prison governors prepare the cases. The governors were recently asked to tell the inmate that any additional information they could provide could shorten the transfer procedure.

It is my impression that the handling of some cases may be delayed because the staff is unaccustomed to this kind of cases.

Suggestion: The Norwegian authorities have tried to encourage prison and ministry staff to handle the cases as soon as possible. We have again distributed the information leaflets to the inmates. It is my suggestion that we do what is possible to increase our local authorities' awareness of the convention and provide them with the necessary tools to handle the requests quickly. We are considering sending out a circular explaining the rules regarding the transfer proceedings.

The request and its contents: The Norwegian Ministry of Justice has tried to make the request as comprehensive as possible. However, I see from PC-OC (2000) 2 that this is not always the case and that collecting additional documents takes a long time. It is especially important that the description of the facts is complete.

Suggestion: The question may be raised if the "Forms for request for co-operation" (cf. Recommendation R (92) 18 and Doc. PC-OC (2000) 4) should be extended to include a more comprehensive list of necessary documents, more specific or in addition to the list contained in the Convention Article 4 (3). In addition to the formula, we need an improved guide with information about each country, cf. PC-OC (2000) 18. When the necessary information regarding prison condition etc. is not available, it leads to additional letters and delayed procedure.

Furthermore, we should perhaps consider to develop the information sheet to the inmate (cf. Recommendation R (84) 11) to include information about the conditions he or she will have to serve under when transferred, rules on release etc.

We may also want consider if the consent to be given, cf. Articles 3 (1) d and 7, should not be given at the very start of the procedures and be considered final and not possible to withdraw. I cannot see that the Convention states that the consent has to be given after the procedure has started if the inmate is given all the necessary information mentioned above.

Translation: All judgements and other documents from us are translated into English. This takes time, but I find it difficult to avoid this, as the judgement would otherwise be incomprehensible to most other Contracting Parties. Correspondingly, documents sent to us must be translated into English if they are not in Norwegian, Swedish or Danish. If documents are sent to us without a translation, we have to send them to a translator, thus adding four to six weeks to the process. If a transfer is urgently needed, I assume that we would be willing to accept a partial translation of the parts necessary to evaluate double criminality etc.

We have had two occasions where the case was delayed because the documents had to be translated from English to Norwegian. We do assume that this was a misunderstanding.

Suggestion: We should all take notice of the language declarations.

Sending the request to the Administering State: Of course, cases should be sent to the Administering State as soon as possible. In most cases, it is not difficult to know where to send the request and we get a reply in due course. It is important that we update the list of experts to the Council of Europe as soon as possible. The last list does not have the address for the contact in the former Yugoslav republic of Macedonia, although the Convention came into force on November 1, 1999. However, if the requests ought not to be sent according to the list, the information should be readily available. If the requests should be addressed to a specific department, this should be clearly stated, as we have had one case where both the original request and a copy disappeared in the mail.

Suggestion: Perhaps a list with the correct addresses should be made available on the Internet together with the conventions (without the names and telephone numbers of the experts).

Federal states in particular: Problems of delay etc. seem to arise especially with states with a federal system. The federal governments seem to have a co-ordinating and distribution function, but they lack the power to instruct the states in individual cases. For the other Parties to the convention, it is an advantage to have an addressee as we rarely have the necessary knowledge to know where the inmate resides in this or that state. However, this forwarding of cases does seem to add to the delays.

We have experienced not receiving any reply, or only heard from the state after long delays. In two cases we did not hear anything, even if we asked to be informed of any developments. In the end, we received a letter informing us that the person requesting a transfer would be released and deported a few days later. While not denying the state its right to decide what it would most convenient, the cases caused us a lot of work and effort that could probably have been better spent.

Suggestion: I do not know why these problems arise. It may be that the federal states feel less committed to the convention's rules on co-operation than the States party to the convention. I do not know enough about the federal system to suggest solutions. Is it possible for the federal ministries to instruct the States to give a higher priority to these kinds of cases or to provide the requesting State with information more quickly?

Use of electronic communication, for example fax or e-mail: In one case between the US and Norway, we was informed that a case had been sent to us. The use of e-mail could undoubtedly provide us with a tool to avoid delays, but several issues must be considered.

Suggestion: We should discuss the use of electronic means to speed up the process, with regard *inter alia* to the following:

- It is difficult to send all the documents by e-mail, i.e. judgements, reports etc.
- The risk of interference with the transmission by hackers and the use of the wrong fax number or e-mail address.
- Internal legislation banning the use of e-mail in official business?

Handling of incoming requests? Requests for a transfer to Norway will be passed on to the Director of Public Prosecutions who forwards it to one of the public prosecutors. They are to consider if the act described in the judgement is punishable in Norway. The prosecutors are very busy and it can take 6-8 weeks before we get a reply, thus significantly adding to the procedural delay. In some States, the request is sent to the courts for an evaluation.

The procedure mentioned above is not prescribed in the Norwegian Transfer of Sentenced Persons Act, but is used because the Ministry felt that one did not have the necessary qualifications to make this evaluation. The question could be raised if making certain that some in the Ministry possesses the necessary experience to make this evaluation could possibly eliminate the delay. The Ministry will also contact the Director of Public Prosecutions to try to shorten the time used there.

Suggestion: The procedures should be evaluated in light of experience to see if a “bottleneck” can be eliminated. If the domestic laws create procedural delays, and the procedure can be considered superfluous, it is a question if one should try to have the laws changed.

Discrepancy in the time to be served if a transfer takes place or not: From the previous discussions we can see that in some cases a request for a transfer is turned down because the term served if transferred is shorter than if a transfer does not take place. In other cases, a request is rejected because the inmate will be released upon arrival in the Administering State. We have also had one case where the request for a transfer was rejected because the time to be served if transferred was longer than other inmates sentenced by the courts in the Administering State would serve.

Norway has insisted on continued enforcement in drug related crimes. This is because the Norwegian Parliament in its handling of the Transfer of Sentenced Persons Act stated that a transfer should not take place if this would result in a significant reduction in the time served. We have not considered it a problem that a prison term is longer than ordinary in Norway, as long as the ordinary rules for release apply.

Suggestion: This topic was also discussed at the 34th meeting of the PC-OC. Perhaps we ought to discuss our current practice in light of our experience to see if the differentiation between the question of rehabilitation and the question of justice is necessary.

Delays in the actual transfer: The problem does not seem to be the transfer itself, but the period from the decision to transfer is made to the transfer actually takes place.

In transfer-cases from Norway, the Ministry receives a date and the names of the police officers coming to escort the inmate to the Administering State. We order the governor to release the inmate and to ask the local police to transfer the inmate to the place where he will be picked up. Normally this can be done within a few days after we have been notified.

Transfers to Norway can normally take place within a few weeks and is handled by the police after the Ministry has designated the prison where the sentence is to be served. However, in one case the transfer could not take place because the prison where the inmate was had not received the necessary documents. It is important that the decision to transfer is sent to the appropriate authorities as soon as possible.

The Norwegian procedure demands that the public prosecutor and the police take care of the actual transfer to Norway. The Ministry decides the procedure, i.e. Articles 10 or 11, but we do not have the authority to order the sentence executed. Nor do we have the power to go to court if that is necessary following Article 10 (2) and 11. Delays may happen both at the public prosecutors office and at the courts trying to schedule a date for the hearing.

Suggestion: Can/ should domestic legislation be amended to alleviate this problem? It has been the practice of Norway, to the greatest extent possible, to use the “continued enforcement procedure” in Article 10 (1), thus eliminating court delays. In other cases where a court hearing is necessary, it is possible to remand the inmate in custody until a hearing has been held, cf. Article 11 (2). If we - as well as the inmate - can accept the uncertainty of the converted sentence, it should be possible to avoid delays here.

Additional question:

Choice of conventions:

Based on our own experience, it can sometimes be difficult to decide if the Transfer Convention or the Convention on the international validity of criminal judgements is to be used. The explanatory report to the Transfer Convention section 13 seems to indicate that it is not necessary for the sentenced person to be serving the sentence when the request is made.

In less serious cases, the sentenced person will normally not be sent directly to prison, but will be allowed to remain at large until the time he is called to serve his sentence. In some unfortunate cases, the sentenced person moved to his native country before the sentence could be served. Is the Additional Protocol applicable in such instances, cf. the word “fleeing”? Is the Transfer Convention or the Convention on the international validity of criminal judgements to be used?