

2000



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 29 March 2000
[PC-OC\Docs 2000\Report 40 Extract-13E]

PC-OC (2000) 15

EUROPEAN COMMITTEE ON CRIME PROBLEMS

(CDPC)

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

41st meeting

Strasbourg, 25–28 March 2000

Secretariat memorandum
prepared by the
Directorate General of Legal Affairs

Convention on the Transfer of Sentenced Persons

Difficulties relating to the combined application of Articles 6 and 17

Languages to be used in information and documents asked by either State before any request for transfer is made

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The Convention provides for exchange of information and/or documents on three different sets of circumstances, namely:

- (a) at a preliminary stage where the person has expressed an interest in being transferred (Article 4, paras 2 to 4);
- (b) requests for transfer, replies and supporting documents (Article 5 and Article 6, paras 1 and 2);
- (c) information and documents asked by either State before any request for transfer was made (Article 6.3).

Article 17 deals with the question of languages to be used. It distinguishes between the situations described above under (a) and (b) and makes provision for languages to be used in one case as in the other. However, it remains mute with regard to the situation described under (c).

No other article of the Convention makes provision for languages to be used in the situation described under (c).

Hence the question: which languages may be used for the purposes of applying Article 6.3 of the Convention, i.e. when a State provides information and/or documents asked for by another State before any of them having requested the transfer of a sentenced person.

Firstly it should be recalled that several articles of the Convention clearly indicate that the latter applies even before a request for transfer is made. Thus the reply to the question above should be found within the Convention.

There appears to be no reason for considering that declarations made under Article 17.3 – which in fact have the purpose of derogating from the rule laid down in Article 17.2 – should apply to any information and/or documents other than "requests for transfer and supporting documents".

Which leaves us with the rule under Article 17.1 and the rule under Article 17.2. The first applies to information under Article 4, paras 2 to 4; the second applies to requests for transfer and supporting documents. None apply to "information and/or documents asked by either State before any request for transfer was made".

One might be led to investigate, for the purposes of the Convention and bearing in mind its operation, which of the two situations (i.e. (a) above and (b) above) is closest to "information and/or documents asked by either State before any request for transfer was made".

Article 4 bears the title "obligation to furnish information". That has to do with an obligation imposed on both States to seek and furnish such information as may be required so that each and all the three actors are in a position where they may decide either to agree or not with the transfer.

If one reads the part of the explanatory report to the Convention that covers Article 4, one cannot but be realise that it could have been written having in mind information and/or documents asked by either State before any request for transfer was made. The following illustrates that:

"30. The principal purpose of conveying this information to the authorities (including the consular authorities) of the person's home country is to enable that state to decide whether it wants to request a transfer, the assumption being that normally the sentenced person's home country will take the initiative to have its own national repatriated.

"31. If the sentenced person has expressed his interest in a transfer not to the sentencing state, but to the state of which he is a national, paragraph 4 applies: in that case, the sentencing state provides the information referred to in paragraph 3 only upon the express request of the state of which the person is a national."

Conversely, no clear argument appears that would allow to bring closer together “information and/or documents asked by either State before any request for transfer is made” and “requests for transfer , replies and supporting documents”.

The conclusion therefore is that information and/or documents asked, under the provisions of Article 6, paragraph 3 of the Convention, by either State, before any request for transfer is made, should be transmitted in the language of the Party to which it is addressed or in one of the official languages of the Council of Europe.