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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**

(CDPC)

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

**43<sup>rd</sup> meeting**

**Strasbourg, 24–26 September 2001**

**Submission by Mr. Seán Hugues (Ireland)**

**SUBJECT**

The unconvicted mentally disordered offender  
who absconds to another jurisdiction

**The issue:** Where an offender who has not been convicted but who is being detained in a mental hospital absconds and flees to another jurisdiction, what can or should be done by the authorities in the two jurisdictions?

**The legislative background:** Under Irish law at present a special verdict of “guilty but insane” may be returned (proposed new legislation will provide that henceforth this will be called “not guilty by reason of insanity”); such a verdict is one of acquittal but the relevant statute requires that the former accused be detained until such time as the authorities are satisfied that it is safe to release the person. The new legislation will also introduce a new plea of “guilty with diminished responsibility” in case of murder. The introduction of the new partial defence of diminished responsibility is likely to result in a decrease in the number of pleas of insanity, the expectation being that accused persons will prefer to plead diminished responsibility. However, the difficulty which has arisen in the case described below could continue to arise. We would like to explore with other delegations what might be done to avoid a repetition of what happened in this case.

**The case:** In July 1989 a jury in the Central Criminal Court returned a verdict of “guilty but insane” against a person charged with two counts of murder and the Court ordered that the person be detained in the Central Mental Hospital (which caters specifically for such people). Beginning in 1991 the person’s detention was reviewed on six occasions by independent advisory committees each consisting of a senior counsel, consultant psychiatrist and a general medical practitioner.

Following such a review in May 1999 a revised parole programme incorporating a phased increase in work parole, group outings and both accompanied and unaccompanied outings was put in place. The programme was designed to provide objective evidence as to whether or not the person concerned continued to be a risk by reason of his continued mental disorder.

In July 2000 the person failed to return to the hospital from a period of temporary release granted as part of the programme of phased releases as recommended by the advisory committee. The person was deemed to be unlawfully at large and the Garda Síochána (police) were requested to search for and return him to the hospital. They, in turn, sought the assistance of the police authorities in other jurisdictions, including the United Kingdom, where he was apprehended shortly afterwards. However, the person was subsequently released by the UK authorities following an examination by UK psychiatrists who found that he did not suffer from a psychiatric condition warranting his detention under English law.

The person could not be returned compulsorily to Ireland as the relevant extradition legislation allows only for warrants for the extradition of accused or convicted persons and the person concerned did not fall into either category. In failing to return from temporary release the person did commit an offence, an offence of being unlawfully at large. However, this is a summary offence only and the relevant legislation allows the extradition procedure for a summary offence to proceed only where a summons has been served personally on the defendant at least 14 days before the Court hearing; this is not a practical proposition where a person is intent on fleeing from the authorities.

Discussions between Ireland and the United Kingdom on the issues arising from the case were held earlier this year. It was agreed that a solution could not to be found in the existing arrangements for extradition, the transfer of sentenced persons, deportation or the transfer of persons under mental health provisions.

It was also agreed between Ireland and the United Kingdom that the matter might best be pursued at Council of Europe level to see whether colleagues have encountered similar problems and to discuss possible solutions. Ireland would welcome hearing from other delegations in this regard.