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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)

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Item 8 of the Draft Agenda
Convention on the Transfer of Sentenced Persons
- *Undue Delays* -

Comments submitted by
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Delays in the initial phase of the procedures:

In his piece Mr. Berg proposes that the collection of the required information be started before the sentence will be declared irrevocable. However, most of the information that is to be sent is only known after the sentence has become irrevocable. Only the medical reports and such like are available before the sentence becomes irrevocable. However, collecting this information does not take long and consequently generally does not cause much delay in the Netherlands.

Mr. Berg's proposal does not provide a solution to the problem. Supplying adequate information to sentenced persons could speed up the procedure.

In the Netherlands detainees are informed by means of leaflets which explain the possibility of transfer to their country of origin. These leaflets are available in various languages. New leaflets are being worked on at the moment. These leaflets will be distributed this year.

The request and its contents:

Requests are additionally delayed if request documents are missing. These documents first have to be retrieved before the request can be dealt with further.

Extension of the 'Forms for request for co-operation' does not speed up the procedure in my opinion. Not every state needs the same documents for dealing with a request. However, a checklist on which states can indicate which documents they always need for dealing with a request could speed up matters.

In requests directed to the Netherlands one or more of the following documents are regularly missing:

- Certified copy of the sentence

Pursuant to article 6, paragraph 2, sub a of the Convention, the request should include a certified copy of the sentence. The Netherlands attaches great value to this certified copy, as the verdict is the foundation for the execution of the sentence.

- Statement of the procedure to be followed.

Not all requests state which procedure, the continuation procedure or the conversion procedure, the requesting state wishes to follow. The Netherlands must know this before the Netherlands can launch a procedure.

- Mentioning of the sentence's irrevocability
- Original statement of agreement of the sentenced person.

In the initial phase of the procedure a lot of information is exchanged back and forth. However, this information exchange is not necessary if both states have had contact with each other more often and are generally aware of the information in article 6, paragraph 1. The handling would be sped up considerably if it could be agreed that letter exchange within the scope of article 6 only took place in case of concrete questions.

In Recommendation No. R (88) 13, states are recommended to interpret the concept nationals broadly.

The Netherlands also consider as nationals integrated foreigners who have a residence permit in the Netherlands that will not be withdrawn due to the conviction. It would be useful to have an overview of the definitions that countries give to the concept national.

According to the Convention, the sentence may not be increased due to the transfer. Many requests include several dates at which the sentenced persons could be eligible for conditional release. The Netherlands requests the sentencing state to indicate the date at which the person involved would most likely be released in the sentencing country. In the Netherlands the sentenced person will not spend any time in detention after this date. This prevents the person involved from actually spending more time in detention due to the transfer.

Mr. Berg is of the opinion that both states could agree definitely with the transfer at the start of the procedure if the sentenced person is aware of all consequences from the beginning. In conformance with article 3, paragraph 1, sub d the sentenced person must agree with his or her transfer. During the procedure circumstances may occur due to which the sentenced person no longer wishes to

agree with the transfer. Definitive agreement at the start of the procedure is therefore not possible in my opinion. However, if the sentenced person is aware of all consequences of his or her transfer at the start of the procedure he or she will retract his or her agreement less quickly in the last phase of the procedure, which means the states have done a lot of work for nothing. An information leaflet for detainees as Mr. Berg suggests is a good way of informing the detainees about the consequences of transfer.

If the procedures are sped up considerably the sentenced person will not retract his or her permission as quickly since there will then be much less time between the agreement and the actual transfer.

Translation:

If the Minister of Justice agrees with the transfer the documents are translated. It often takes several weeks before the translation is received. As Mr. Berg indicates in his piece, this translation is indispensable since requests without translation are incomprehensible for most approached countries.

Requests directed at the Netherlands must be drawn up in Dutch, French, English or German. If the requests are sent in a different language they must be translated in the Netherlands, which causes the request to be delayed. If a request is urgent, however, the Netherlands will also accept a partial translation for a first evaluation of the proposal. A comprehensive translation in Dutch, French, English or German is required for further consideration by the Dutch judicial authorities.

Requests are generally dealt with more quickly if they have been translated into the language of the approached country, irrespective of whether this state demands a translation.

Sending the request to the Administering State:

Continual update of the address list is of great importance. As well as Macedonia, the addresses for Scotland and Northern Ireland are missing. Requests can be sent directly to both countries.

Mr. Berg's proposal to publish the list with correct addresses on the Internet will improve accessibility and ensure they are as current as possible.

Use of electronic communication, for example fax or e-mail:

Communication in the Netherlands with the United States of America and the United Kingdom regularly takes place by fax. However, the official requests are always sent by normal mail. E-mail is hardly ever used.

Use of electronic means of communication could speed up the handling considerably. Especially in the information exchange phase the use of electronic communication means is useful. Recommendation No R (84) 11 also recommends use of the fax.

Handling of incoming request:

If the requesting state opts for the conversion procedure the Dutch Public Prosecution Department is asked for advice in accordance with Dutch legislation. The Public Prosecution Department assesses whether the offences for which the person involved has been sentenced are also liable to punishment in the Netherlands. If the Public Prosecution Department does not see any problems, the transfer is arranged. Once the person involved is in the Netherlands the case is brought before a Dutch court, who converts the sentence to a Dutch sentence. The Netherlands prefer this procedure. An additional advantage of this procedure is that it speeds up the procedure, since the sentenced person is first transferred before he or she has to appear before the court.

If the requesting state opts for the continued procedure, advice is asked from the Court of Appeal in Arnhem in conformance with the Dutch act on sentence enforcement transfer. For most requests it takes several months before the Minister has received the Court of Appeal's advice. It is not possible to give advice sooner due to the amount of work at the Court of Appeal.

At the time the act on sentence enforcement transfer came into effect the Dutch Minister of Justice indicated that the duration of the custodial sanction should not be fully excessive in relation to what would be considered suitable according to Dutch standards in terms of deprivation of liberty for the offence committed abroad.

If the Court of Appeal considers the punishment to be excessively high according to Dutch standards it will advise negatively, unless there are special circumstances. If the Court of Appeal advises negatively the Minister will consider him or herself committed to the advice. However, the Minister can request the Court of Appeal for a reconsideration if the Court of Appeal has not weighed all the circumstances or if other special circumstances came to light later.

If the Court of Appeal advises positively the Minister will agree with the transfer. The requesting country is then informed of the agreement and the Dutch Public Prosecution Department is requested to arrange the transfer. Once the person involved is in the Netherlands the foreign sentence is enforced here. If the sentence exceeds the Dutch sentence maximum, the sentence is adjusted by means of an administrative decision.

Foreign countries do not always agree with the transfer if they hear that the person involved will be released earlier due to the Dutch Conditional Release Regulation or due to conformance to the Dutch maximum sentence.

An overview of the procedures per country is being worked on in the Netherlands at the moment. The differences per country are looked at and the areas where improvements or acceleration may be possible.

Since the national procedures take up most time when dealing with requests it is useful for every state to look into the possibilities of speeding up these procedures. The Netherlands are working on such research.

Delays in the actual transfer:

In his piece Mr. Berg indicates that following the continuation procedure in Norway prevents delays, since the request no longer has to be submitted to a court. However, following the continuation procedure in the Netherlands causes a delay. In continuation procedures in the Netherlands the request must be sent to the Court of Appeal in Arnhem before the person involved is transferred. If the conversion procedure is followed, the person involved is transferred to the Netherlands before the case comes before a court of law.