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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

**Draft Recommendation concerning the practical
application of the Convention on the Transfer of
Sentenced Persons and the Additional Protocol thereto**

**The draft Recommendation was
approved by the CDPC at its 77th meeting**

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Having regard to the Convention on the Transfer of Sentenced Persons and to the Additional Protocol thereto;

Recalling that these instruments aim to further the ends of justice and the social rehabilitation of sentenced persons;

Reiterating the importance of the social rehabilitation of sentenced persons and recalling that foreigners who are deprived of their liberty as a result of their commission of a criminal offence should therefore be given the opportunity to serve their sentences or measures within their own society;

Desirous to facilitate and accelerate the practical application of the Convention and its Additional Protocol and to improve international co-operation in this field so as to promote possibilities for transfer for the benefit of the sentenced persons concerned and society as a whole;

Desirous also to improve the exchange of information between the sentencing State and the administering State as well as the information provided to sentenced persons;

Considering the need to repeal and replace its Recommendations No. R(88)13 and No. R(92)18 on the practical application of the Convention on the Transfer of Sentenced Persons and its Recommendation No. R(84)11 concerning information about the Convention on the Transfer of Sentenced persons with this new and comprehensive Recommendation so as to take into account the Additional Protocol as well as the increased number of Parties to the Convention, the experience gained in its application and the developments in society and technology;

Recommends that the governments of member States, Parties to the Convention and, where applicable, Parties to the Additional Protocol thereto:

1. ratify the Additional Protocol, as amended, if they have not yet done so, and allow for its provisional application by making a declaration to this effect, as foreseen in Article 5;
2. have regard to the Guidelines contained in Appendix 1 to this Recommendation in order to promote and facilitate the application of the Convention and the Additional Protocol;
3. ensure that this Recommendation, its Appendices and its Explanatory Memorandum are translated and disseminated to all relevant authorities;

Instructs the Secretary General of the Council of Europe to transmit this Recommendation to the governments of the non-member States which are Parties to the Convention and the Additional Protocol, as well as to the governments of States invited to accede to these instruments.

Guidelines for the practical application of the Convention on the Transfer of Sentenced Persons and the Additional Protocol thereto

Governments of member States Parties to the Convention are invited to:

1. *ensure the widest possible application of the Convention and the Additional Protocol and in particular by:*
 - a. using the possibility under Article 3, paragraph 4 of the Convention to define or redefine the term "national", for the purpose of the Convention, in a broad sense, including usual residence and having regard to any close ties the persons concerned have with the administering State, in particular the presence of family and children of the sentenced person;
 - b. finding ways to enable the transfer of persons who, in addition to their prison sentence, have been sentenced to a fine or have other financial obligations in the sentencing State;
 - c. taking measures to ensure that mentally ill persons serving a prison sentence or deprived of their liberty by a measure imposed by a court, as a result of committing a criminal offence, can also benefit from a transfer to their own social environment.
 - Due regard should thereby be given to the availability of an appropriate type of treatment of the mentally ill person in the administering State, in close consultation between the States concerned.
 - If the person concerned is legally incompetent or otherwise unable to express his or her informed consent to such transfer, account should be taken of the consent of his or her legal representative.
2. *improve international co-operation, transparency and legal certainty before a decision on transfer is taken*
 - a. concerning the choice of the enforcement procedure: either continued enforcement or conversion of the sentence, by virtue of Article 3, paragraph 3 of the Convention, take due account of any difficulties which the exclusion of one of the procedures might entail for the application of the Convention or the functioning of the transfer procedure.

When use is made of the possibility of issuing a declaration to that effect, in line with Article 3, paragraph 3 of the Convention, take account of:

- the difficulties this might entail for other Contracting States, and seek a solution which would enable the transfer of the sentenced person with due regard to his or her interest in being transferred;
- the interest of the sentenced person and the sentencing State in obtaining legal certainty, transparency and foreseeability of the transfer and its results, by providing

information about the consequences of the declaration for the application of the Convention and the transfer mechanism.

b. provide other Contracting States with complete and updated information on the authorities responsible for the implementation of the Convention and the Additional Protocol thereto, the procedural requirements, organisational arrangements, the rules applicable to early release and other relevant information to facilitate the operation of the Convention;

c. conclude, where appropriate and in exceptional circumstances, *ad hoc* arrangements between a sentencing and an administering State, in the form of an addendum to a transfer decision under the Convention and the Additional Protocol thereto, which would state mutual expectations and provide for an adequate commitment by the administering State.

3. provide nationals sentenced abroad, as soon as possible, with precise and easily comprehensible information on the possibilities and conditions for transfer under the Convention and /or its additional Protocol and its consequences for the execution of their sentence so as to ensure that they can provide an informed consent or opinion

a. by translating the information on the operation of the Convention and of its Additional Protocol, contained in Appendices 2 and 3 to the Recommendation, into the national language taking into account any reservations or declarations to the Convention and its Additional Protocol of which potential transferees would need to be aware;

b. by supplementing the text of Appendices 2 and 3 with information, in the national language, regarding the national legislation including the applicable rules to determine the length of the sentence to be served, the conditions of enforcement of the sentence, the conditions of eligibility for early or conditional release, and all relevant details of the expected effects of a transfer;

c. by ensuring that this information is up to date and transmitted to all the sentenced persons concerned while giving them an opportunity to ask questions and receive advice. The provision of information should be ensured by the prison authorities of the sentencing State as well as by the consular services of the States of nationality of the sentenced persons. To this end, the information should be made available to all Parties of the Convention.

4. ensure the effective handling of transfer requests by processing them diligently and by promptly informing the requesting State of the decision taken, in compliance with Article 5, paragraph 4 of the Convention, by:

a. introducing target dates for decision-making and appointing a contact person for the processing of requests;

b. promoting consultation with the requesting State and informing the other State and, where appropriate, the sentenced person, when a request raises particular difficulties likely to cause delays;

- c. making the widest possible use of electronic and other modern means of communication;
- d. providing the requested State with the information referred to in Article 4, paragraph 3 of the Convention, in as much detail and as soon as possible;
- e. anticipating requests for supporting documents by the sentencing State, pursuant to Article 6, paragraph 1 of the Convention;
- f. limiting requests for supporting documents, pursuant to Article 6, paragraph 3 of the Convention, and in particular for their translation, referring to Article 17, paragraphs 2 and 3 of the Convention to the minimum necessary to take a decision. This applies in particular to judgments;
- g. ensuring that information on any remission earned by the prisoner in the sentencing State and any other factors relevant to the enforcement of the sentence, based on a hypothetical date of transfer, is given to the administering State before the transfer is effected or, where this is not possible, as soon as possible after the transfer;
- h. by sending informal advance copies of requests and supporting documents, so as to enable the requested State to make a preliminary assessment of the request and anticipate the follow-up to be given;
- i. by providing the requesting State and the sentenced person concerned, as far as possible and without prejudice to the rules in the Convention, with the reasons for decisions refusing a transfer.

5. *effect agreed transfers as soon as possible after the sentenced person has given his or her voluntary and informed consent or opinion, as verified in conformity with Article 7 of the Convention, and to this end, the sentencing State shall:*

- a. ensure efficient co-ordination between the different authorities involved in the transfer;
- b. provide the administering State with an updated statement in conformity with Article 6 paragraph 2 of the Convention, indicating how much of the sentence has already been served, including information on any pre-trial detention, remission and any other factor relevant to the enforcement of the sentence;
- c. also provide the medical services of the prison authorities of the administering State with social and medical reports, whenever appropriate, including psychiatric assessments, information on medical treatment prescribed and possible recommendations on further treatment, under conditions ensuring confidentiality. Sentenced persons or, in the case of legally incompetent mentally ill persons, their representatives, should be informed that their medical records will be transferred and should be entitled to object to the transfer of those records, in accordance with national legislation.

6. *reduce the risk of the sentenced person withdrawing his or her consent at an advanced stage of the transfer procedure by:*
- a. taking the necessary measures to keep the sentenced person regularly informed of the progress made in the transfer procedure and the expected date of transfer in compliance with Article 4, paragraph 5 of the Convention;
 - b. considering the possibility of introducing a reasonable time limit for the withdrawal of consent, in the absence of important changes affecting the situation of the person concerned;
 - c. considering the possibility of introducing a minimum period of 12 months before the person who withdrew his or her consent can make a new request for transfer, in the absence of exceptional circumstances.
7. *improve communication with the sentencing State on the enforcement of the sentence after the transfer has taken place, in the interests of the sentencing State and of the victims. To this end, the administering State should, in addition to the requirements laid down in Article 15 of the Convention:*
- a. unless otherwise provided for in national law, international conventions or bilateral agreements, when a transferred person has escaped custody and left the territory of the administering State and therefore that State is unable to enforce the completion of the sentence, inform the sentencing State that the enforcement of the sentence cannot be completed, and the sentencing State may then enforce the completion of the sentence;
 - b. inform the sentencing State without delay of any commutation of the sentence or other change affecting the custody of the sentenced person, including the granting of early or conditional release or the imposition of alternative measures to imprisonment, such as electronic monitoring or house arrest.

Model text providing information about the Convention on the Transfer of Sentenced Persons¹

The Council of Europe Convention on the Transfer of Sentenced Persons (1983, ETS No. 112) enables, under certain conditions, persons who have received a custodial sentence in a country other than their own to be transferred to their home country to serve the sentence there. A brief explanation of these conditions is given below.

Please note that this document does not constitute an exhaustive description of the Convention. If, therefore, you wish to enquire into the possibility of being transferred to serve your sentence in [administering State], you should ask the prison authority or [the appropriate authority in administering State] for more detailed information, for example, to arrange for you to receive a copy of the Convention and for both States to consider the possibility of your transfer. You may also address a request for information to a consular representative of [administering State].

When does the Convention apply?

When the State where you were sentenced and your State of nationality are both Parties to the Convention (you can consult the list of Parties to the Convention [here](#)).

However, when both these States are EU member States, the transfer is regulated by 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 for the purpose of their enforcement in the European Union. For further information on the operation of the EU procedures, you may ask the prison authority or the consular representative of your country of nationality.

Who needs to agree to the transfer?

A transfer requires the consent of all the following:

- a. the person concerned or, where required, that of his or her legal representative;
- b. the State where the person concerned was sentenced; and
- c. the State to which the transfer is requested.

Who may benefit from a transfer to [administering State]?

You may be eligible for transfer to [administering State] if all the following conditions are fulfilled:

- a. you are considered a national of [administering State];

¹ Model to be translated, adapted and completed by (administering) States for their nationals who might benefit from a transfer to their country of origin.

- b. the judgment by which your sentence was imposed is final;
- c. as a general rule, at least six months of your sentence remain to be served, though in exceptional circumstances this period may be less; and
- d. the offence for which you were tried is a criminal offence under the law of [administering State].

What sentence would need to be served following transfer?

- For States using the "continued enforcement" procedure:

The maximum sentence to be served following transfer would be the remainder of the original sentence after deducting the time served, as well as any remission earned in the sentencing State up to the date of transfer. If the sentence imposed in the sentencing State was longer than, or of a different nature to, the sentence which could be imposed for the same offence in [administering State], it could be adapted to the nearest equivalent sentence available under the law of [administering State], without being longer or more severe than the original sentence.

You should be aware that, once you have been transferred, the release arrangements applicable in the sentencing State will cease to apply and will be replaced by those that apply in [administering State]. This may have an impact on when you will be eligible for conditional release or other arrangements regarding the execution of your sentence. If you are transferred, your sentence will be enforced in accordance with the law and regulations which apply in [administering State].

- For States using the "conversion of sentence" procedure:

The original sentence would need to be converted by [a court]/[the competent authorities] in [administering State] [before]/[following] the transfer to a sentence which could have been imposed if the offence had been committed in [administering State]. This [court]/[competent authority] will be bound by the findings as to the facts, insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State. Should the conversion procedure take place following the transfer, you would be given some idea of the nature and length of the sentence to which the original sentence might be converted in [administering State], in order to help you to decide whether to seek a transfer. Under the terms of the Convention, a sentence converted in this way will not be more severe or longer than the original sentence, will not be subject to any minimum which the law of [administering State] may provide for the offence, and will take account of the full period spent in custody before transfer.

You should be aware that, once you have been transferred, the release arrangements applicable in the sentencing State will cease to apply and will be replaced by those that apply in [administering State]. This may have an impact on when you will be eligible for conditional release or other arrangements regarding the execution of your sentence. If

you are transferred, your sentence will be enforced in accordance with the law and regulations which apply in [administering State].

Prosecution for other offences

Please note that in the event of your transfer the authorities of [administering State] are entitled to prosecute, sentence or detain you for any offence other than that for which your current sentence was imposed.

Pardon, amnesty, commutation

Your transfer will not prevent you from benefiting from any pardon, amnesty or commutation of sentence, which might be granted by either the sentencing State or [administering State].

Review of the original judgment

If new information comes to light after your transfer, which you consider grounds for a review of the original judgment passed in the sentencing State, it will be for the sentencing State alone to decide on any application for review.

Termination of enforcement

If for any reason the sentence originally imposed in the sentencing State ceases to be enforceable in the sentencing State, the [administering State] authorities will release you as soon as they are informed. Similarly, should the sentence being served in [administering State] cease to be enforceable there, you would no longer be required to serve the original sentence imposed in the sentencing State should you return there.

Some information on the procedure

You may express your interest in being transferred to the authorities of either the sentencing State or [administering State].

If the authorities of the sentencing State are prepared to consider your transfer, they will provide the [administering State] authorities with information about you, the facts relating to your conviction and sentence, and the nature and length of your sentence. If the [administering State] authorities are prepared to consider your transfer, they will respond by providing [information about the nature and duration of the sentence you would need to serve after transfer]²/[an indication as to how your sentence might be converted following your transfer]³, together with information about the arrangements for remission, conditional release, etc. in [administering State]. Please note that, in

² This applies to States using the "continued enforcement" procedure.

³This applies to States using the "conversion of sentence" procedure.

preparation for your transfer, your social and medical file might be forwarded to [administering State].

Model text on the Additional Protocol to the Convention, as amended¹

Like the Convention on the Transfer of Sentenced Persons, the Additional Protocol (1979, ETS No. 167) and its amending Protocol (2017, CETS No. 222) enables persons who have received a custodial sentence in a State other than their own to serve their sentence in their home country, in order to facilitate their social rehabilitation. While most of the information applicable to the Convention is also valid for the Additional Protocol, the latter applies to specific situations and contains some procedural differences. A brief explanation of these specific cases is provided below.

Please note that this document does not constitute an exhaustive description of the Additional Protocol. If, therefore, you wish to obtain more detailed information, you should ask the prison authority or the appropriate authority in [administering State], for example, to arrange for you to receive a copy of both the Convention and its Additional Protocol, since it is important to read them together. You may also address a request for information to a [consular or other] representative of [administering State].

When does the Additional Protocol apply?

- a. When the State where you were sentenced and your State of nationality are both Parties to the Additional Protocol.

Please note that not all Parties to the Convention are also Parties to the Additional Protocol. You can consult the list of Parties to the Additional Protocol [here](#) .

In addition, when both these States are EU member States, the transfer is regulated by the 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 for the purpose of their enforcement in the European Union. For further information on the operation of the EU procedures you may ask the prison authority or the consular representative of your country of nationality.

- b. When your situation is one of the following:
 - i. you fled or returned to your country of nationality before serving part or all of the custodial sentence imposed by the State where the crime was committed;

¹ Model to be translated, adapted and completed by (administering) States for their nationals who might benefit from a transfer to their country of origin.

- ii. in addition to your custodial sentence, you received an expulsion or deportation order indicating that you will have to leave the sentencing State as soon as the sentence has been completed².

What is different in the transfer procedure as compared to the Convention?

In the first case, when you fled or returned to your country of nationality before serving the sentence, the sentencing State may ask [administering State] to execute your sentence or the remainder of it. Agreement to this request may be refused. Pending this agreement, [the administering State] may hold you in provisional detention. Your position in terms of sentence enforcement shall not, however, be aggravated by the period spent in provisional detention. Since you are already in your country of nationality, your consent or opinion on the transfer of your sentence is not required.

In the second case, when you received an expulsion or deportation order in addition to your custodial sentence, the sentencing State may ask [administering State] for your transfer. Since you will not be entitled to remain in the sentencing State after serving your sentence, your consent is not required. However, [administering State] will not take a decision without having considered your opinion on the request. To this end, the sentencing State will ask for your opinion and inform [administering State] accordingly.

When a transfer has been agreed in this situation, you will not be prosecuted or sentenced for offences committed before the transfer unless the sentencing State so authorises, or unless you stayed in or returned voluntarily to [administering State] after serving your sentence.

The Convention applies to all other elements of the transfer procedure and to the conditions concerning the execution of your sentence by [administering State].

² Some States Parties to the Protocol exercised the possibility of issuing a declaration indicating that they will not take over the execution of sentences in this case. Please indicate if this applies to you.