

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation No. R (88) 13

**of the Committee of Ministers to member states
concerning the practical application of the Convention
on the Transfer of Sentenced Persons¹**

*(Adopted by the Committee of Ministers on 22 September 1988
at the 419th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Desirous of facilitating the practical application of the Convention on the Transfer of Sentenced Persons and

of encouraging the widest possible use of the transfer mechanism it provides ;

Having regard to Recommendation No. R (84) 11 concerning information about the Convention on the

Transfer of Sentenced Persons,

I. Recommends the governments of member states :

1. *Concerning the choice of enforcement procedure (Article 3.3 of the convention)*

a. that, when considering whether to exclude, by virtue of Article 3.3 of the convention, the application of one

of the enforcement procedures provided for in Article 9.I, they take due account of any difficulties which such

an exclusion might entail for the application of the convention or the functioning of the transfer mechanism ;

b. that, if they have made the declaration under Article 3.3, they take account of the difficulties which that

declaration might entail for the application of the convention or the functioning of the transfer mechanism in

relation to other Contracting States, and seek a solution which would enable the transfer of the sentenced

person, taking into account in particular his interest in being transferred ;

2. *Concerning the application to "nationals" (Article 3.4 of the convention)*

that they consider availing themselves of the possibility under Article 3.4 to define the term "national" in a

wide sense, having regard to any close ties the persons concerned have with the administering state ;

3. *Concerning the processing of transfer requests*

a. that they establish procedures and make organisational arrangements for the effective handling of transfer

requests and inform the other Parties thereof, with a view to making them aware of the procedure in all its

stages ; this could be effected by addressing explanatory notes or letters to the other Parties or by means of

an *aide-mémoire* ;

b. that they deal with transfer requests and take decisions on whether or not to agree to a transfer as

expeditiously as possible, and, to that effect, consider introducing target dates for the processing of cases ;

where a request raises particular difficulties likely to cause delay, the other Party and the sentenced person

should be so informed ;

c. that, to expedite the processing of transfer requests, particularly in urgent cases, the competent authorities

make the widest possible use of modern means of telecommunication, such as telex and telefax facilities ;

4. *Concerning information to be supplied to the sentenced person*

that, to enable the sentenced person to give his informed consent, the competent authorities of the sentencing state endeavour to provide him with all relevant details of the expected effects of his transfer, including, if possible, information on the conditions for early release ;

- 129 -

5. *Concerning the transfer of the sentenced person*

a. that they effect agreed transfers as soon as possible after the sentenced person has given his consent ;

b. that they ensure 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 supplied to the administering state before the transfer is effected ; where this is not possible, the information should be supplied as soon as possible after transfer ;

II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of non-member states party to the convention and to the governments of states invited to accede to the convention.

1. When this recommendation was adopted, the Representative of Greece, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of his Government to comply or not with paragraph 1.2 of the recommendation.

- 130 -

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation No. R (84) 12

of the Committee of Ministers to member states concerning foreign prisoners

(Adopted by the Committee of Ministers on 21 June 1984 at the 374th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the large number of foreign prisoners detained in the penitentiary establishments of member states ;

Recognising the difficulties which these prisoners may face on account of such factors as different language,

culture, customs and religion ;

Desirous of alleviating any possible isolation of foreign prisoners and of facilitating their treatment with a view

to their social resettlement ;

Considering that such treatment should take into account the special needs of foreign prisoners and ensure

that it provides them with opportunities equal to those accorded to other prisoners ;

Considering it desirable to establish certain standards at European level ;

Having regard to Resolution (73) 5 on standard minimum rules for the treatment of prisoners and Resolution

(75) 3 on the legal and administrative aspects of criminality among migrant workers.

Recommends the governments of member states to be guided in their law and practice by the principles

annexed to this recommendation.

- 131 -

APPENDIX

The following principles are designed to apply to foreign prisoners, that is to say to prisoners of different nationality who on account of such factors as language, customs, cultural background or religion may face specific problems. As far as prisoners awaiting trial or extradition are concerned, these principles should, however, be applied only to the extent that their implementation does not impair the purpose of the detention.

In implementing these principles, account should be taken of the requirements of the prison administration, including prison security, and the availability of resources.

The principles should be applied so as to ensure that the treatment of foreign prisoners is conducive to their social resettlement. This might require adopting particular measures in relation to particular categories of foreign prisoners, taking into account such factors as nationality, language, religious precepts and customs, cultural background, length of sentence, and liability to expulsion. Every reasonable effort should be made to ensure that the treatment of foreign prisoners does not lead to their being disadvantaged.

I. Allocation to prison establishments

1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone. If his allocation to a prison establishment is likely to alleviate his situation of isolation and to facilitate his treatment it may be effected according to his specific needs, particularly with regard to his communications with persons of the same nationality, language, religion or culture. This possibility should be envisaged in particular where the national penitentiary system takes account of the wishes of prisoners when allocating them to prison establishments.

II. Treatment in prison

a. Measures to reduce isolation and promote social resettlement

2. To alleviate his feeling of isolation, a foreign prisoner's communications with other persons of the same nationality, language, religion or culture should be facilitated, for instance by permitting them to work, spend their leisure time or take exercise together.

3. Every effort should be made to give foreign prisoners access to reading material in their language. To that end, prisons might seek the assistance of consular services and appropriate private organisations.

4. Where a foreign prisoner is likely to be able to remain in the country of detention and wishes to be assimilated into the culture of that country, the prison authority should assist him in doing so.

5. Foreign prisoners should have the same access as national prisoners to education and vocational training.

In order that foreign prisoners may have access to courses designed to improve educational and professional qualifications, consideration should be given to the possibility of providing them with necessary special facilities.

6. Visits and other contacts with the outside world should be so arranged as to meet the foreign prisoner's special needs.

7. Ordinarily foreign prisoners should be eligible for prison leave and other authorised exits from prison

according to the same principles as nationals. The assessment of the risk that a foreign prisoner may leave

the country and escape punishment should always be made on the merits of the individual case.

b. *Measures to reduce language barriers*

8. Foreign prisoners should be informed promptly after reception into a prison, in a language which they

understand of the main features of prison routine, of available training and study facilities, and of possibilities, if any, for requesting the assistance of an interpreter. This information should be supplied in

writing or, where this is not possible, orally.

- 132 -

9. A foreign prisoner who has no command of the language of the country in which he is detained should be

provided with translation or interpretation concerning sentence, any right of appeal, and any judicial decision

taken in the course of his detention.

10. To enable foreign prisoners to learn the language spoken in the prison, appropriate opportunities for

language training should be provided for them.

c. *Measures to meet special requirements*

11. The religious precepts and customs of foreign prisoners should be respected. So far as practicable,

foreign prisoners should be allowed to comply with them.

12. Account should also be taken of problems which might arise from differences in culture.

d. *Measures to ease conditions of detention*

13. Foreign prisoners, who in practice do not enjoy all the facilities accorded to nationals and whose

conditions of detention are generally more difficult, should be treated in such a manner as to counterbalance,

so far as may be possible, these disadvantages.

III. Assistance by consular authorities

14. Foreign prisoners should be informed without delay of their right to request contacts with their consular

authorities, the possibilities of assistance which might be accorded by these authorities and any action

concerning them which is to be taken by the competent authorities having regard to existing consular

treaties. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, including

action for his social resettlement in case of expulsion, the latter should be informed promptly of his wish.

15. Consular authorities should, at the earliest possible stage, assist their detained nationals, particularly by

regularly visiting them.

16. In the course of their duties, consular authorities should offer any assistance possible to further the social

resettlement of foreign prisoners, in accordance with the relevant regulations and arrangements of the

country of detention. In particular, they should offer their assistance concerning the prisoner's family relations

by facilitating visits from and contacts with members of his family.

17. Consular authorities should make every effort to provide, in accordance with existing prison regulations, literature and other reading material to help foreign prisoners maintain contacts with their home countries.

18. Consular authorities should consider the production of information leaflets for their detained nationals.

These leaflets should indicate the location and telephone number of the nearest consulate and inform the

prisoner of the possibilities of assistance which may be granted by consulates, such as visiting the prisoner,

providing information as regards his defence, supplying literature and reading material, and suggesting

possibilities of repatriation, particularly as regards the prisoner's transfer in application of existing international agreements. These leaflets should be made available to the prisoner at the earliest possible

stage of his detention.

IV. Assistance by community agencies

19. Prison authorities and community agencies working in the field of aid and resettlement of prisoners

should, in collaboration, pay particular attention to foreign prisoners and their specific problems. Community

agencies in the prisoner's home country should act in collaboration with the consular authorities of that

country.

20. Community agencies should be encouraged to promote information for foreign prisoners about

assistance which may be offered to them. Prison authorities should ensure that this information is easily

accessible to foreign prisoners.

21. Contacts of foreign prisoners with community agencies should be facilitated.

- 133 -

22. With a view to according adequate assistance to foreign prisoners, prison authorities should grant

community agencies all necessary opportunities for visits and correspondence, provided that the prisoner

consents to these contacts. Where only a limited number of visits can be made, consideration

should be given in appropriate cases to extending the visiting time and to making restrictions on sending or receiving

letters more flexible.

23. With a view to facilitating contacts between community agencies and foreign prisoners, the competent

authorities in each country should appoint a national contact bureau for community agencies which have

responsibility for the social resettlement of prisoners and operate in its territory. The address of the national

contact bureau as well as that of any diplomatic or consular authority should be communicated by the prison

authority to any foreign prisoner at the moment of reception into the prison.

24. The organisation of assistance by volunteers likely to be able to assist foreign prisoners should be

promoted and furthered. These volunteers should act under the responsibility of either the prison authorities

or the consular authorities or the community agencies. As far as possible, these volunteers should be

accorded the same opportunities as those referred to in paragraph 22.

V. Training and use of prison staff

25. Training for prison officers and other categories of staff to support their work with foreign prisoners should be encouraged and incorporated in the normal training programmes. In general, such training should seek to improve understanding of the difficulties and cultural backgrounds of foreign prisoners so as to prevent prejudiced attitudes from arising.

26. Consideration should be given to having certain staff available for more intensive work with foreign prisoners and enhancing their ability to do so through the provision of more specialised training focusing, for instance, upon the learning of a language or particular difficulties occurring in relation to particular groups of foreign prisoners.

VI. Collection of statistics

27. Consideration should be given to the collection of routine statistics which allow foreign nationals to be classified with reference to factors of importance for practical administration. In this context it should be borne in mind that it is desirable to be able to subdivide the foreign prisoner population with regard to nationality, length of sentence, main offence, residence in the country and liability to expulsion. So far as possible, the statistics should cover the numbers received during the course of a year as well as a daily average.

28. Consideration should also be given to conducting occasional surveys on matters which do not easily lend themselves to analysis by routine statistics.

VII. Expulsion and repatriation

29. In order to allow for the most adequate prison treatment, decisions concerning expulsion should be taken as soon as possible, without prejudice to the prisoner's right to appeal against the decision, taking into account the foreign prisoner's personal ties and the effects on his social resettlement.

30. In view of the advantages to the prisoner's social resettlement, the competent authorities of the country of detention should, regardless of any decision on expulsion, consider the desirability of repatriating the prisoner, in accordance with existing international arrangements.

- 134 -

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation No. R (84) 11 of the Committee of Ministers to member states concerning information about the Convention on the Transfer of Sentenced Persons

*(Adopted by the Committee of Ministers on 21 June 1984
at the 374th meeting of the Ministers Deputies)*

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 of 21 March 1983 ;
Desirous of assisting Contracting States to fulfil their obligation, under Article 4.1 of the convention, to furnish

sentenced persons to whom the convention may apply with information on its substance ;
Considering it essential that this information is provided in a language which the sentenced person understands ;
Convinced that a standard text to be used for conveying information on the substance of the convention to potential transferees will assist Contracting States in arranging for the necessary translations,
I. Recommends the governments of member states to provide an authoritative translation of the standard text annexed to this recommendation into their official language or languages, taking into account any reservations or declarations to the convention of which the potential transferees would need to be aware, and deposit the translation with the Secretary General of the Council of Europe at the time of ratification, acceptance or approval of the convention ;
II. Instructs the Secretary General of the Council of Europe to forward copies of the translations so received to each of the Contracting States for use by their prison authorities ;
III. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of the non-member states which have participated in the elaboration of the convention and to the governments of states invited to accede to the convention.

APPENDIX

Standard text providing information about the Convention on the Transfer of Sentenced Persons

The Convention on the Transfer of Sentenced Persons 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. 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 any request for information to a consular representative of (administering State).

Who has to agree to the transfer ?

A transfer requires :

- a. the consent of the person concerned or, where requisite, that of his legal representative ;
- b. the consent of the State where he was sentenced ; and
- 135 -
- c. the consent of the State to which transfer is requested.

Who may benefit from a transfer to (administering State) ?

You may be eligible for transfer to (administering State) if the following conditions are fulfilled :

- a. if you are considered a national of (administering State) ;
- b. if the judgment by which your sentence was imposed is final ;
- c. if, 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. if 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 ?

- (States using the "continued enforcement" procedure :)

The maximum sentence to be served following transfer would be the amount of the original sentence which remained after deduction of any remission earned in (sentencing State) up to the date of transfer. If the

sentence imposed in (sentencing State) was longer or of a different nature than the sentence which could be imposed for the same offence in (administering State), it would be adapted to the nearest equivalent sentence which was available under the law of (administering State) without being longer or more severe than the original sentence.

- (States using the "conversion of sentence" procedure :)

It would not be possible to confirm before transfer the precise nature and length of the sentence to be served

in (administering State), because the original sentence would need to be converted by (a court) (the competent authorities) in (administering State) following transfer to a sentence which could have been

imposed if the offence had been committed in (administering State). You would be given some idea,

however, of the nature and length of the sentence to which the original sentence might be converted in

(administering State), 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 nor 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.

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 would not prevent you from benefiting from any pardon, amnesty or commutation of sentence

which might be granted by either (sentencing State) or (administering State).

Review of original judgment

If new information came to light after your transfer which you considered grounds for a review of the original

judgment passed in (sentencing State), it would be for (sentencing State) alone to decide on any application

for review.

- 136 -

Termination of enforcement

If for any reason whatsoever the sentence originally imposed in (sentencing State) ceased to be enforceable

in (sentencing State), the (administering State) authorities, as soon as they were informed of this, would release you from the sentence being served. Similarly, when the sentence being served in (administering State) ceased to be enforceable there, you could no longer be required to serve the original sentence imposed in (sentencing State) if you should return there.

Some information on the procedure

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

If the (sentencing State) authorities are prepared to consider your transfer, they will provide the (administering State) authorities with information about you, about the facts relating to your conviction and sentence and about 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)¹, (an indication as to how your sentence might be converted following your transfers)², together with information about the arrangements for remission, conditional release, etc. in (administering State).

Provided both States are content to agree to your transfer, you will be asked whether, having received and considered the information provided by (administering State), you consent to being transferred under the convention.

1. Applies to states using the "continued enforcement" procedure.

2. Applies to states using the "conversion of sentence" procedure.