Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1527 (2001)[1]

Operation of the Council of Europe Convention on the Transfer of Sentenced Persons – critical analysis and recommendations

Parliamentary Assembly

1. The Council of Europe Convention on the Transfer of Sentenced Persons (ETS No. 112) provides for the transfer of foreign prisoners to their home countries, both for their own sake and because transfer enhances rehabilitation and reintegration into society, and consequently reduces recidivism.

2. Since its entry into force in 1985 the convention has enabled, facilitated or accelerated the repatriation of hundreds of prisoners, and the Assembly considers it to be a very valuable instrument for international co-operation in penal matters.

3. Unfortunately, in practice, the convention does not operate as smoothly as is desirable. The procedural framework for transfer set out in the convention is unwieldy and lacks clarity. In addition, states often overlook the normative basis for transfer set out in the convention.

4. The result is that either states do not co-operate fully in using the convention or they seek to restrict its application.

5. While these problems have a negative impact on the operation of the convention they are not insurmountable, and there are a number of positive steps which the Council of Europe could take to overcome them.

6. For the optimal functioning of the convention, it is important that the largest possible number of member states and, indeed, of other countries – as it is open to accession by non-member states – become parties to the convention.

7. The convention has now been ratified by an overwhelming majority of member states (forty out of forty-three). Nine non-member states have also become parties.

8. In 1997 an additional protocol to the convention (ETS No. 167) was concluded, which deals with persons having fled from the sentencing state and with sentenced persons subject to an expulsion or deportation order.

9. For the reasons set out above, the Assembly recommends that the Committee of Ministers:

9.1. invite those member states which have not yet done so to ratify as soon as possible the Convention on the Transfer of Sentenced Persons;

9.2. actively encourage those non-member states which have not yet done so, particularly those in which prison conditions are recognised as poor, to accede to the convention;

1. Assembly debate on 27 June 2001 (21st Sitting) (see Doc. 9117, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Enright; and Doc. 9137, opinion of the Social, Health and Family Affairs Committee, rapporteur: Mrs Fernández-Capel). Text adopted by the Assembly on 27 June 2001 (21st Sitting)

9.3. draw up a new recommendation to member states on the interpretation and application of the convention, with the following objectives:

a. to streamline and harmonise the information member states seek when processing a transfer application and to state a maximum time-limit for every request for information;

b. to state clearly that the convention is not designed to be used for the immediate release of prisoners on return to their own country;

c. to urge contracting states not to refuse transfers on the grounds that the prisoner might possibly benefit from earlier release in the administering state;

d. to urge contracting states to interpret the nationality requirement broadly and in line with the convention's rationale;

e. to specify a minimum threshold for the sentence which must be served (for example, 50%), below which states can legitimately refuse a transfer, but above which states should facilitate a transfer;

f. to issue a clear statement that the convention applies to all mentally disturbed prisoners and that their transfer should be a matter of highest priority, and to recommend that all states parties implement Article 9 of the convention, which gives states discretion regarding how to continue the treatment of mentally disturbed prisoners after transfer;

g. to strongly discourage the blocking of transfers because of outstanding fines;

h. to urge contracting states to give utmost consideration to the family ties and personal relationships of the prisoner when considering a transfer request;

i. to urge contracting states to respect the right of consent of prisoners, so as to prevent forced transfers that are contrary to the humanitarian spirit of the convention;

9.4. explore the possibility of drawing up a new additional protocol to the convention in which some of the recommendations under sub-paragraph iii above would be included;

9.5. organise a series of training seminars at which states parties could present their domestic transfer procedures, exchange information and explore how to improve their systems and make them more transparent.