Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 13540
20 June 2014

Measures to prevent abusive use of the Convention on the Transfer of Sentenced Persons (ETS No. 112)

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Christopher CHOPE, United Kingdom, European Democrat Group

Summary

The Committee on Legal Affairs and Human Rights considers the legal implications of the case of Ramil Safarov, who was transferred under the Convention on the Transfer of Sentenced Persons from Hungary to Azerbaijan, where he was granted a presidential pardon, released, and "rewarded" for murdering an Armenian soldier.

Although this pardon was not formally in violation of the convention (Article 12 of which provides for such a possibility), it was contrary to the latter's purpose of ensuring the continued enforcement, closer to home, of prison sentences handed down abroad, in the interest of justice and social rehabilitation. The committee stresses that States must apply the convention in good faith. In order to prevent the abusive use of Article 12 of the convention, as occurred in the Safarov case, States are called upon to conclude ad hoc arrangements in the course of negotiating transfers, notably in cases of a sensitive diplomatic and political nature, in which the administering State should confirm its commitment to the object and purpose of the convention.

1. Reference to committee: Bureau decision, Reference 3914 of 5 October 2012.

Contents **Page**

A. Draft resolution 3
B. Draft recommendation 4
C. Explanatory memorandum by Mr Chope, rapporteur 5
1. Introduction 5
1.1. Procedure 5
1.2. The issues at stake 5
2. The Safarov case 5
2.1. Events leading to Mr Safarov's return to Azerbaijan and his subsequent pardon 5
2.2. International reaction to Mr Safarov's release 7
3. The legal issues raised by the Safarov case 9
3.1. Main provisions and purpose of the convention 9
3.2. Assessment of the application of the convention by Azerbaijan 10
3.3. Assessment of the application of the convention by Hungary 12
4. Possible measures to prevent future misuse of the convention 13
5. Conclusions 14

A. Draft resolution[2]

1. The Convention on the Transfer of Sentenced Persons (ETS No. 112) provides for the transfer of foreign prisoners to their home countries. Its purpose is primarily humanitarian, to improve prospects of rehabilitation and reintegration of prison inmates into society.

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

3. The Assembly notes with concern that the convention was invoked in order to justify the immediate release, upon transfer to Azerbaijan, of Mr Ramil Safarov, an Azerbaijani soldier convicted of murdering a fellow Armenian participant on a "Partnership for Peace" training course in Hungary, sponsored by the North Atlantic Treaty Organisation (NATO). Upon his arrival in Azerbaijan, he was welcomed as a national hero and granted an immediate pardon – long before the expiry of the minimum sentence set by the Hungarian court –a retroactive promotion as well as other rewards.

4. While recognising that States Parties, by virtue of Article 12 of the convention, have a sovereign right to grant pardons and amnesties to persons sentenced to a term of imprisonment, the Assembly recalls that the principles of good faith in international relations, recognised, *inter alia,* by the Vienna Convention on the Law of Treaties, and of the rule of law require that treaties be interpreted in line with their objects and purposes.

5. The Assembly therefore:

5.1. condemns the use of Article 12 of the convention by Azerbaijan in the case of Mr Safarov as a violation of the principles of good faith in international relations and of the rule of law;

5.2. confirms its position, expressed in Recommendation 1527 (2001), that the Convention on the Transfer of Sentenced Persons is not designed to be used for the immediate release of prisoners upon return to their home country;

5.3. underscores the importance of applying the convention in good faith and, in interpreting its provisions, adhering to the principles of the rule of law, in particular in transfer cases that might have political or diplomatic implications;

5.4. recommends to States Parties to the convention to conclude, where appropriate, ad hoc arrangements between a sentencing and an administering State in the form of an addendum to a transfer agreement under the convention, which would spell out mutual expectations and provide for adequate assurances by the administering State.

2. Draft resolution adopted by the committee on 27 May 2014.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution … (2014) on measures to prevent abusive use of the Convention on the Transfer of Sentenced Persons (ETS No. 112), as well as its Recommendation 1527 (2001) on the operation of the Council of Europe Convention on the Transfer of Sentenced Persons – critical analysis and recommendations. It further recalls Committee of Ministers Recommendation No. R (84) 11 concerning information about the convention, as well as Recommendations Nos. R (88) 13 and R (92) 18 concerning the practical application of the said convention.

2. The Assembly invites the Committee of Ministers to:

2.1. reiterate that the Convention on the Transfer of Sentenced Persons is not primarily intended to be used for the immediate release of prisoners upon return to their home countries, and to clearly state that this understanding should also guide the application of Article 12 of the convention which provides for pardons and amnesties;

2.2. recommend to States Parties to the convention to conclude, in particular in cases which may have political or diplomatic repercussions, ad hoc arrangements between a sentencing and an administering State, in the form of an addendum to a transfer agreement under the convention which would stipulate stringent assurances by the administering State to abide by the general principles of the convention; such an addendum could *inter alia* comprise information by the administering State, in a specific case, concerning the manner in which it intends to apply Article 12 of the convention.

3. Draft recommendation adopted by the committee on 27 May 2014.

C. Explanatory memorandum by Mr Chope, rapporteur

1. Introduction

1.1. Procedure

1. On 5 October 2012, the Committee on Legal Affairs and Human Rights was seized for report on "Measures to prevent the abusive use of the Council of Europe Convention on the Transfer of Sentenced Persons". At its meeting on 12 November 2012, the committee appointed Mr Renato Farina (Italy, EPP/CD) rapporteur.

2. On 11 December 2012, the committee held an exchange of views with Ms Anita van de Kar-Bachelet, Secretary to the Council of Europe's Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC), based on information compiled by the Secretariat beforehand.[4] On 25 June 2013, the committee considered an introductory memorandum. Following Mr Farina's departure from the Assembly, the committee appointed me, on 4 September 2013, as the new rapporteur. On 12 December 2013, the committee held an exchange of views with Mr Eugenio Selvaggi, Deputy Prosecutor General at the Court of Cassation in Rome and former Chairperson and member of the PC-OC since 1994.[5]

1.2. The issues at stake

3. The above reference to committee followed on from a current affairs debate held on 4 October 2012 on the "Safarov case",[6] which raised concern about a possible improper use[7] of the Convention on the Transfer of Sentenced Persons (ETS No. 112).[8]

4. The purpose of this report is to examine the legal issues raised by the Safarov case, which concerned the transfer, under the convention, from Hungary to Azerbaijan, of convicted murderer Ramil Safarov, and the presidential pardon subsequently granted to him. The scope of the present report will be limited mainly to the alleged abusive use, by Azerbaijan, of Article 12 of the convention, which *inter alia* provides for the granting of pardon. This case may have set a precedent which could negatively affect the proper use of this convention in the future.

2. The Safarov case

2.1. Events leading to Mr Safarov's return to Azerbaijan and his subsequent pardon

5. In January 2004, Ramil Safarov, a lieutenant in the Azerbaijani army, participated in an English language training course in Budapest, Hungary, which was organised within the framework of the "Partnership for Peace" programme for military personnel from former Soviet Union countries, sponsored by the North Atlantic Treaty Organisation (NATO). Two Armenian officers, Gurgen Margayan and Hayk Makuchyan, also took part in this course. In the evening of 17 February 2004, Ramil Safarov bought an axe and a honing stone with the intention of killing the Armenian participants on the language course. The next day, he sharpened the axe in his room. At around 5 a.m. on 19 February, he took the axe and went to Gurgen Margayan's room. He found the door unlocked and struck Mr Margayan down with 16 blows of his axe while the latter was asleep, almost severing his head from his body. Gurgen Margayan died at the scene. Ramil Safarov then went to Hayk Makuchyan's room with the intention of murdering him too, but found the door locked. He attempted to

---

4. See document AS/Jur (2012) 43 and summary records of the committee's meeting of 11 December 2012, AS/Jur (2012) PV 09.
5. See summary records of the committee's meeting of 12 December 2013, AS/Jur (2013) PV 09.
6. See the verbatim record of the debate, AS (2012) CR 35.
7. Whereas the title refers to the "abusive use" of the convention, the present report will employ the terminology suggested by Mr Eugenio Selvaggi during the committee's December 2013 exchange of views, namely it will refer to the "misuse" or "improper use" of the convention. Mr Selvaggi explained that, whereas the term "abuse of the convention" related to a political evaluation, the term "misuse" related to the legal appreciation of the convention's application.
8. Adopted 21 March 1983, entered into force 1 July 1985. The convention was supplemented with an Additional Protocol (ETS No. 167; adopted 18 December 1997, entered into force on 1 June 2000) which provides for rules applicable to the transfer of the execution of sentences in two different cases: firstly when a sentenced person has fled the sentencing State to go to the State of his or her nationality, and secondly where the sentenced person is subject to expulsion or deportation as a consequence of the sentence.

break the door with his axe, but by that time, students in the neighbouring room had woken up and prevented him from carrying out his plan until the police arrived. The Hungarian police, which had been called by Gurgen Margayan's room-mate, arrested Ramil Safarov at the scene.

6. Criminal proceedings were instigated against Ramil Safarov in Hungary. During his trial, Mr Safarov confessed to the deed and showed no remorse for his crime, instead freely admitting that the only reason for killing Gurgen Margayan had been that he was Armenian.[9] On 13 April 2006, a Hungarian first-instance court found Mr Safarov guilty of the premeditated and unusually cruel murder of Gurgen Margayan and the attempted murder of Hayk Makuchyan, and sentenced him to life imprisonment without the possibility of early release for 30 years. The fact that the motive of the murder had been the victim's nationality and that Mr Safarov's confession completely lacked regret or compassion were treated as aggravating circumstances.[10] On 22 February 2007, the Hungarian Court of Appeal upheld the ruling and dismissed the appeal filed by Ramil Safarov.[11]

7. After serving eight years of his life sentence in Hungary, Ramil Safarov, upon his request, was transferred to Azerbaijan on 31 August 2012 pursuant to arrangements foreseen under the Convention on the Transfer of Sentenced Persons. Upon arrival, he was given a hero's welcome, granted a full pardon by President Ilham Aliev and, within a few hours, released from custody. He was also assigned an apartment in Baku and given eight years' back pay. Moreover, the Minister of Defence reinstated him in the army and promoted him to the rank of major in a public ceremony.[12]

8. These events gave rise to protests in Yerevan, Budapest and elsewhere.[13] On 31 August 2012, the Armenian Government suspended diplomatic relations with Hungary in response to the latter's decision to transfer Ramil Safarov to Azerbaijan, which was regarded as an unfriendly act.[14] Moreover, the Armenian authorities addressed a note verbale to the President of the United Nations Human Rights Council, calling on member States to condemn Mr Safarov's pardon and release.[15] The release also appears to have led to an escalation of the tensions between Armenia and Azerbaijan, with Armenian President Serzh Sargsyan indicating that his country was ready for war with Azerbaijan if it were to break out.[16]

9. The Hungarian authorities, for their part, issued a statement indicating that the transfer had been approved in accordance with the Convention on the Transfer of Sentenced Persons, to which both Hungary and Azerbaijan are a Party. Moreover, both the Ministry of Public Administration and Justice and the Ministry of Foreign Affairs stated that they had received assurances from the Azerbaijani authorities that Ramil Safarov would remain in prison for the remainder of his sentence.[17] According to Hungarian State officials, the Deputy Minister of Justice of Azerbaijan, Vilayat Zahirov, had sent an official letter to the Hungarian Ministry of Public Administration and Justice on 15 August 2012, stating that the execution of the decisions of foreign States'

---

9. See European Parliament Resolution on Azerbaijan: the Ramil Safarov case (2012/2785(RSP)), paragraph A; Kristóf Szombati, "What does the Safarov case tell us about Hungary today?", Heinrich Boell Foundation, 7 September 2012.

10. Note verbale dated 24 September 2012 from the Permanent Mission of the Republic of Armenia to the United Nations Office and other international organisations in Geneva, addressed to the President of the Human Rights Council, document A/HRC/21/G/10, p. 1; European Forum for Democracy and Solidarity, "Outrage in Armenia over Hungary's extradition of Azerbaijani murder convict", 3 September 2012; K. Szombati, *supra* footnote 9.

11. Reuters, "Azeri jailed for life in Hungary for killing Armenian", 22 February 2007.

12. European Parliament resolution on Azerbaijan, *supra* footnote 10; *New York Times*, "A Hero's Welcome for a Convicted Killer Reignites Tensions", 4 September 2012.

13. *New York Times*, ibid.; BBC, "Armenians hold anti-Hungary rally over Azeri killer pardon", 1 September 2012; *The Economist*, "Hungary, Armenia and the axe-murderer: Blunder in Budapest", 4 September 2012; Radio Free Europe/Radio Liberty, "As Armenia protests killer's pardon, Azerbaijan promotes him", 2 September 2012; European Forum for Democracy and Solidarity, *supra* footnote 10; "Блокнот", "Армяне Ростова-на-Дону провели акцию у представительства Венгрии" [Rostov-on-Don Armenians held a protest in front of the Hungarian representation] (in Russian), 2 September 2012.

14. Remarks by the President of the Republic of Armenia Serzh Sargsyan at the Meeting with the Heads of Diplomatic Missions Accredited in the Republic of Armenia, 31 August 2012. See further Note verbale from the Permanent Mission of the Republic of Armenia to the United Nations Office and other international organisations in Geneva, *supra* footnote 10, p. 2; European Parliament resolution on Azerbaijan, *supra* footnote 9; BBC, "Armenia cuts ties with Hungary over Azerbaijan killer pardon", 31 August 2012.

15. Note verbale from the Permanent Mission of the Republic of Armenia to the United Nations Office and other international organisations in Geneva, *supra* footnote 10, p. 3.

16. BBC, "Azeri killer Ramil Safarov: Concern over Armenian Anger", 3 September 2012.

17. Communication of the Ministry of Public Administration and Justice of Hungary, "Ramil Sahib Safarov's sentence will continue to be enforced by Azerbaijan", 31 August 2012; European Forum for Democracy and Solidarity, *supra* footnote 10; The Hungarian Government's reactions to the sudden and unexpected release of Ramil Sahib Safarov by Azeri authorities, Hungarian Prime Minister's Office, 3 September 2012.

courts regarding the transfer of sentenced persons to serve the remaining part of their prison sentences in Azerbaijan were carried out in accordance with Article 9.1.*a* of the Convention on the Transfer of Sentenced Persons.[18] Article 9 concerns the general principles governing the enforcement of the sentence in the administering State, with paragraph 1 stating that administering States may choose between two ways of enforcement: they may either continue the enforcement (pursuant to sub-paragraph *a*) or convert the sentence into a decision which substitutes a sanction prescribed by their own laws (pursuant to sub-paragraph *b*). In line with the assurance that prison sentences issued abroad were continually enforced in Azerbaijan, without any conversion of their sentences and without having to go through any new judicial procedure, Azerbaijan had made a declaration on 25 January 2001 stating that: "[Azerbaijan] totally excludes the procedures provided in Article 9.1.*b* of the convention".[19] Mr Zahirov further indicated that according to Article 57.3 of the Azerbaijani Criminal Code, the punishment of a convict serving a life sentence could only be replaced by a court with a term of imprisonment for a specified period or the convict could be released on conditional parole only after serving at least 25 years of his prison sentence.[20] The Azerbaijani authorities subsequently denied having given any diplomatic assurances to the Hungarian authorities.[21] The Hungarian authorities protested and condemned Azerbaijan's decision to free Ramil Safarov, and summoned the Azerbaijani Ambassador in Budapest over the case.[22]

10. In March 2013, the legal successors of Gurgen Margayan as well as Hayk Makuchyan filed a complaint against Azerbaijan and Hungary before the European Court of Human Rights ("the Court") alleging a violation of Article 2 (right to life) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights (ETS No. 5).[23] Moreover, in March 2013, Armenia expressed its intention to refer the case to the United Nations Committee on the Elimination of Racial Discrimination[24] under Article 11 of the United Nations Convention on the Elimination of All Forms of Racial Discrimination.

2.2. International reaction to Mr Safarov's release

11. The decision by the Azerbaijani President to pardon Ramil Safarov led to prompt and widespread international condemnation from international organisations, governments as well as non-governmental organisations (NGOs), several of whom expressed concern that the events may undermine the reconciliation process between Armenia and Azerbaijan and contribute to a further escalation of the tensions between the two States.

2.2.1. Reaction at the Council of Europe

12. The Secretary General of the Council of Europe, Thorbjørn Jagland, stated that making a hero out of a convicted murderer was unacceptable.[25] The Parliamentary Assembly's President, Jean-Claude Mignon, stated that the liberation of Mr Safarov was an abusive use of a Council of Europe legal instrument.[26] His

---

18. Article 9.1.*a* provides that: "The competent authorities of the administering State shall continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10." Article 10 provides that: "1. In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State; 2. If, however, this sentence is by its nature or duration, incompatible with the laws of the administering State or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State."

19. List of declarations made in respect to treaty No. 112, Convention on the Transfer of Sentenced Persons.

20. Communication of the Ministry of Public Administration and Justice of Hungary, *supra* footnote 17; Azerbaijani extradition – Foreign ministry says Azerbaijan's action unacceptable, Hungarian Ministry of Foreign Affairs, 3 September 2012; Azerbaijani extradition – Hungary condemns amnesty in diplomatic note, Hungarian Ministry of Foreign Affairs, 3 September 2012.

21. European Parliament resolution on Azerbaijan, *supra* footnote 9, paragraph E.

22. Azerbaijani extradition – Hungary condemns amnesty in diplomatic note, Hungarian Ministry of Foreign Affairs, *supra* footnote 20; Communication of the Ministry of Public Administration and Justice of Hungary, *supra* footnote 21; Hungarian Prime Minister's Office, *supra* footnote 17.

23. European Human Rights Advocacy Centre, "Case launched at European Court to challenge Presidential pardon given to murderer", 1 March 2013.

24. News from Armenia, "Armenia to appeal to UN Committee on Elimination of Discrimination on Safarov case", 1 March 2013.

25. Secretary General Jagland: "Making a hero out of a murder convict is unacceptable, 4 September 2012.

26. PACE President concerned by the serious deterioration in relations between Armenia and Azerbaijan following the decision to pardon Ramil Safarov, 5 September 2012.

release was likewise condemned by several members of the Parliamentary Assembly during the current affairs debate held on the Safarov case on 4 October 2012. Furthermore, the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, deplored the pardoning and glorification of a person who had committed a crime motivated by the victim's nationality,[27] as did the European Commission against Racism and Intolerance (ECRI) which further stressed that cases such as that of Ramil Safarov may cultivate a sense of impunity for the perpetrators of racist offences of the most serious nature.[28]

2.2.2. Reaction beyond the Council of Europe

13. Beyond the Council of Europe, United Nations Secretary-General Ban Ki-Moon expressed concern about the developments surrounding Mr Safarov's transfer to Azerbaijan and subsequent pardon, and underscored the importance of adhering to the rule of law.[29] Similarly, the United Nations High Commissioner for Human Rights, Navanethem Pillay, stated that international standards regarding accountability for serious crimes should be upheld.[30]

14. At the European Union level, the European Union High Representative for Foreign Affairs and Security Policy, Catherine Ashton, as well as Štefan Füle, Commissioner for Enlargement and Neighbourhood Policy, expressed concern about the pardon granted to Mr Safarov.[31] The President of the European Parliament, Martin Schulz, stated that the Convention on the Transfer of Sentenced Persons should not be abused for political purposes,[32] and the European Parliament adopted a resolution condemning Mr Safarov's pardon.[33] The European Union–Armenia Parliamentary Cooperation Committee (PCC) Co-Chair, Milan Cabrnoch, voiced concern that the presidential pardon granted to Mr Safarov might be seen as a dangerous misuse of judicial proceedings.[34]

15. The OSCE Minsk Group Co-Chairs, Ambassadors Igor Popov of the Russian Federation, Jacques Faure of France, and Ian Kelly of the United States of America, expressed their deep concern and regret about the damage the pardon and any attempts to glorify the crime had done to the peace process and trust between the two sides,[35] as did NATO Secretary General Anders Fogh Rasmussen.[36] Furthermore, Nikolav Bordyzha, Secretary-General of the Collective Security Treaty Organisation, stated that the decision by the Azerbaijani authorities to pardon Mr Safarov was unjustifiable and contrary to international law.[37]

16. Amnesty International considered that the pardoning and promotion of Mr Safarov may be perceived as an endorsement of ethnically motivated violence, and called on the Azerbaijani Government to rescind any privileges awarded to him and to publicly condemn ethnic violence.[38]

17. In the same vein, several ministers, ambassadors and members of parliament from various States within and outside the Council of Europe issued statements expressing concern about the pardoning and glorification of Mr Safarov, among them the Foreign Ministries of Cyprus,[39] France,[40] Luxembourg,[41] Norway,[42] the Russian Federation[43] and Sweden,[44] the Secretary of State for European and NATO Affairs of the United Kingdom,[45] the Canadian Embassy to Turkey, Georgia, Azerbaijan and Turkmenistan[46] and the

---

27. The Commissioner concerned about the pardon of Azerbaijani army officer convicted of murder, Council of Europe, Office in Yerevan,4 September 2012.
28. Statement by the European Commission against Racism and Intolerance concerning the pardoning in Azerbaijan of a person convicted of hate crime, 4 September 2012.
29. Highlights of the Noon Briefing by Spokesperson for Secretary-General Ban Ki-Moon, 6 September 2012.
30. Press briefing note on Azerbaijan by Spokesperson for the UN High Commissioner for Human Rights, Rupert Colville, 7 September 2012.
31. Statement by the Spokespersons of EU High Representative Catherine Ashton and Commissioner Štefan Füle on the release of Ramil Safarov, 3 September 2012.
32. Schulz on pardoning Ramil Safarov in Azerbaijan, European Parliament, 4 September 2012.
33. European Parliament resolution on Azerbaijan, *supra* footnote 9.
34. Statement by the European Union-Armenia Parliamentary Cooperation Committee (PCC) Co-Chair Milan Cabrnoch, 6 September 2012.
35. OSCE Minsk Group Co-Chairs meet with the Foreign Ministers of Armenia and Azerbaijan, 3 September 2012.
36. Speech by NATO Secretary General Anders Fogh Rasmussen at the Yerevan State University in Yerevan, Armenia, 6 September 2012; Speech by NATO Secretary General Anders Fogh Rasmussen at the Azerbaijan Diplomatic Academy in Baku, Azerbaijan, 7 September 2012.
37. Комментарий Генерального секретаря Организации Договора о коллективной безопасности Н. Бордюжи о ситуации вокруг решения властей Азербайджана помиловать убийцу армянского офицера (Comments by the Secretary General of the Collective Security Treaty, Nikolai Bordyuzha, about the situation surrounding the decision of the Azerbaijani authorities to pardon the murderer of an Armenian army officer) (in Russian), 3 September 2012.
38. Amnesty International, "Azerbaijan: Government sends dangerous message on ethnically-motivated violence", 6 September 2012, AI Index: EUR 55/015/2012.

Chairperson of the Canada–Armenia Parliamentary Friendship Group of the Canadian House of Commons,[47] as well as United States President Barack Obama (via the National Security Council),[48] the State Department[49] and the Chairperson of the Foreign Relations Committee of the Senate of the United States.[50]

3. The legal issues raised by the Safarov case

3.1. Main provisions and purpose of the convention

18. The primary aim of the Convention on the Transfer of Sentenced Persons is to facilitate the social rehabilitation of prisoners by providing, for persons who have been sentenced to a term of imprisonment abroad, the possibility of serving the remainder of their sentence in their home country. Paragraph 9 of the explanatory report, which is designed to give guidance to States Parties on the interpretation of the convention, states that: "As penal policy has come to lay greater emphasis upon the social rehabilitation of offenders, it may be of paramount importance that the sanction imposed on the offender is enforced in his home country rather than in the State where the offence was committed and the judgment rendered. This policy is also rooted in humanitarian considerations: difficulties in communication by reason of language barriers, alienation from local culture and customs, and the absence of contacts with relatives may have detrimental effects on the foreign prisoner. The repatriation of sentenced persons may therefore be in the best interests of the prisoners as well as of the governments concerned."[51] Indeed, studies indicate that foreign prisoners experience problems relating to culture, communication, access to services, etc., and that these problems are most pronounced when cultural and language differences are the strongest, and the barriers to communicating with family and friends the severest.[52] There is a general consensus that sentenced persons who serve their sentence in their home country have a better chance of being rehabilitated, re-socialised and reintegrated into the community than elsewhere.[53]

19. Under the convention, a transfer may be requested either by the State in which the sentence was imposed (the sentencing State) or the State of which the sentenced person is a national (the administering State). The transfer is subject to the consent of both States and that of the sentenced person. The convention does not impose any obligation on the sentencing or administering State to agree to a transfer. It merely sets the framework within which States are encouraged to co-operate, and provides for a procedure for this purpose.

---

39. The Minister of Foreign Affairs met with the Minister of Foreign Affairs of Armenia, Ministry of Foreign Affairs of the Republic of Cyprus,14 September 2012.
40. Azerbaijan – Pardon granted to M.Safarov – Statement by the Ministry of Foreign Affairs Spokesman, France Diplomatie, 3 September 2012.
41. Official visit of Jean Asselborn to the Republic of Armenia, 11 September 2012, Ministry of Foreign and European Affairs of the Dukedom of Luxembourg, 11 September 2012.
42. Concern over tensions between Armenia and Azerbaijan, Norwegian Ministry of Foreign Affairs, 5 September 2012.
43. Statement of A.K. Lukashevich, Official Representative of MFA of Russia, regarding the extradition of Azerbaijani soldier by Hungary, Ministry of Foreign Affairs of the Russian Federation, 3 September 2012.
44. Carl Bildt, Minister for Foreign Affairs of Sweden, via Twitter.
45. Minister for Europe David Lidington met the President of Armenia, Serzh Sargsyan, Prime Minister Tigran Sargsyan and the Minister of Foreign Affairs, Edward Nalbandian, United Kingdom Foreign and Commonwealth Office, 21 September 2012.
46. Canada Disappointed by Safarov Pardon, Canada's Embassy to Turkey, Georgia, Azerbaijan and Turkmenistan, 13 September 2012.
47. Statement by Harold Albrecht (Kitchener – Conestoga, ON), House of Commons of Canada, Debates of 19 September 2012.
48. Statement by NSC Spokesman Tommy Vietor on Azerbaijan's Decision to Pardon Ramil Safarov, The White House, Office of the Press Secretary, 31 August 2012.
49. Pardon of Azerbaijani Soldier, Press Statement by Patrick Ventrell, Acting Deputy Spokesperson, United States Department of State, Office of Press Relations, 31 August 2012.
50. Kerry Statement on Release of Ramil Safarov, United States Senate Committee on Foreign Relations, 5 September 2012.
51. Explanatory Report to the Convention on the Transfer of Sentenced Persons.
52. De Wree E., Vander Beken T. and Vermeulen G., "The transfer of sentenced persons in Europe: Much ado about reintegration", *Punishment & Society*, Vol. 11, No. 1 (2009), 111-128, p. 117.
53. United Nations Office on Drugs and Crime, "Handbook on the International Transfer of Sentenced Persons", *Criminal Justice Handbook Series* (New York, 2012), pp. 10-11.

3.2. Assessment of the application of the convention by Azerbaijan

20. The presidential pardon granted to Ramil Safarov was purportedly based on Article 12 of the Convention on the Transfer of Sentenced Persons, which provides that: "Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws." Azerbaijan, as the administering State, indicated that Ramil Safarov could legally be pardoned by virtue of Article 109.22 of the Constitution of the Republic of Azerbaijan.[54]

21. Whilst this pardon complied with the letter of the Constitution and was not formally in contravention of the convention, the question arises whether it was consistent with the principles of the rule of law and in conformity with the spirit of the Convention on the Transfer of Sentenced Persons as enunciated in its Preamble. The latter states that Council of Europe member States and other signatory States are "[d]esirous of further developing international co-operation in the field of criminal law" and that "such co-operation should further the ends of justice and the social rehabilitation of sentenced persons".

22. The subject of the immediate release of a person transferred in accordance with the convention was first examined by the Parliamentary Assembly[55] in 2001. The Assembly recommended that the Committee of Ministers draw up a new recommendation to member States on the interpretation and application of this instrument with, among others, the objective of stating clearly that the convention is not designed to be used for the immediate release of prisoners on return to their own country.[56] The Committee of Ministers, for its part, indicated that it supported the view that the convention is not primarily intended to be used for the immediate release of prisoners upon return to their home countries.[57] However, no specific mention of the release of a sentenced person following a pardon under Article 12 of the convention was made.

23. While it is arguable that the objective of rehabilitation is principally served in all cases of transfer,[58] one may equally suggest that in the case of Ramil Safarov, the immediate release upon transfer was incompatible with the notion of social rehabilitation, since it was not ensured that Mr Safarov would serve a minimum period of time appropriate to the seriousness of the crime he had committed and that he showed a minimum of remorse allowing the authorities to conclude that he would not re-offend following his release.

24. Regardless of which of these readings one agrees with, there can be little doubt that Ramil Safarov's immediate pardon and release on arrival in Azerbaijan jeopardised the convention's second aim, of ensuring continued and full enforcement of the sentence in the interest of justice. This assessment is supported by the case law of the European Court of Human Right on Article 2 of the European Convention on Human Rights (right to life), according to which the Court will scrutinise closely and intervene in cases where there is a "manifest disproportion between the gravity of the act and the punishment imposed".[59] Furthermore, the Court has held that "when an agent of the State, in particular a law-enforcement officer, is convicted of a crime that violates Article 2 of the Convention, the granting of an amnesty or pardon can scarcely serve the purpose of an adequate punishment".[60]

25. Azerbaijan's efforts to facilitate Ramil Safarov's transfer would thus seem to have been motivated by interests other than accomplishing the two-fold purpose of ensuring social rehabilitation and justice by means of securing the continued enforcement of the sentence, albeit closer to home. It can therefore be readily appreciated that the decision to immediately pardon Mr Safarov on his arrival conflicted with the principles of the rule of law.

26. Article 26 of the 1969 Vienna Convention on the Law of Treaties provides that: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." It derives from the nature of the convention that its proper application requires mutual trust between the Parties involved. States Parties must

---

54. This Article provides that: "The President of the Azerbaijan Republic shall pass Acts on granting mercy", see: http://confinder.richmond.edu/admin/docs/local_azerbaijan.pdf.
55. Report of the Committee on Legal Affairs and Human Rights on the operation of the Council of Europe Convention on the Transfer of Sentenced Persons – critical analysis and recommendations (Rapporteur: Mr Tom Enright, Ireland, EPP), Doc. 9117, 7 June 2001.
56. Recommendation 1527 (2001) on the operation of the Council of Europe Convention on the Transfer of Sentenced Persons – critical analysis and recommendations.
57. Doc. 9670, reply of the Committee of Ministers to Recommendation 1527 (2001).
58. PC-OC, "Convention on the Transfer of Sentenced Persons, Additional Protocol to the Convention on the Transfer of Sentenced Persons, Explanatory Notes", 3 September 2003, PC-OC/INF 67.
59. See, *inter alia, Nikolova and Velichkova v. Bulgaria*, Application No. 7888/03, judgment of 20 December 2007, paragraph 62.
60. *Enukidze and Girgvliani v. Georgia*, Application No. 25091/07, judgment of 26 April 2011, paragraph 274 (references omitted).

therefore negotiate and implement treaties in good faith. The spirit of the Convention on the Transfer of Sentenced Persons implies that the administering State respects and executes, in good faith, the judgment passed by the sentencing State.

27. That said, the pardon granted to Ramil Safarov cannot be construed as having been in conformity with the purpose of Article 12 of the convention, and it was arguably contrary to the intention of the drafters when they elaborated that provision. Black's Law Dictionary defines a pardon as "[a]n act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed". The power to grant a pardon is usually regulated at the constitutional level and commonly belongs to the Head of State or the Parliament. After a pardon, a convict's crime is forgiven and the relevant penalty cancelled. Pardons are usually granted when individuals have demonstrated that they have paid their debt to society or are otherwise considered to be deserving of forgiveness. In the case of Ramil Safarov, however, while there was no dispute that he had committed the crime that he was found guilty of and that it merited severe punishment, the presidential pardon was seemingly granted as a reward for Hayk Makuchyan's murder, motivated by nationalist hate. It did not imply forgiveness, but the glorification of a crime on political grounds.

28. The impression that Azerbaijan did not act in good faith in applying Article 12 of the convention in Mr Safarov's case is reinforced by a systematic interpretation of the convention, which in Article 3.1.*c* stipulates as a condition for transfer that the person concerned still has at least six months of the sentence to serve. In the same vein, Mr Selvaggi recalled, in the course of the committee's exchange of views, the opinion of the PC-OC concerning the refusal of some States to transfer certain prisoners to Turkey on the grounds that there they would have benefited from an amnesty law and been immediately released, so effectively no sentence would have been served in the administering State. The PC-OC found that such cases were outside the scope of the convention.

29. These considerations give rise to the conclusion that Azerbaijan's use of Article 12 of the convention to effectuate Ramil Safarov's immediate release upon transfer was contrary to the aim of this provision and undermined the raison d'être of the convention.

30. The Safarov case also raises the issue whether the declaration made by Azerbaijan in respect of Article 12 of the convention amounts to a reservation and, if this were the case, whether the principle of reciprocity would apply.[61] Azerbaijan has made the following declaration: "In accordance with Article 12 of the convention, the Republic of Azerbaijan declares that decisions regarding the pardons and amnesties of sentenced persons transferred by the Republic of Azerbaijan should be agreed with the relevant competent authorities of the Republic of Azerbaijan".[62] The issue of whether this declaration is subject to the principle of reciprocity, namely of whether Mr Safarov's pardon should have been agreed on with the Hungarian counterparts, was examined in a PC-OC opinion received from the Council of Europe's Legal Advice Department and Treaty Office on 18 March 2013.[63] The PC-OC concluded that, even if the Azerbaijani declarations were in fact considered as a reservation within the meaning of Article 2 of the Vienna Convention on the Law of Treaties,[64] the scope of the principle of reciprocity in this respect would still need to be determined. In any event, the declaration made by Azerbaijan to Article 12 of the convention illustrates the generally restrictive attitude of Azerbaijan as a sentencing Party with regard to pardons granted by others. The declaration made by Azerbaijan and the fact that the Azerbaijani authorities did not inform their Hungarian counterparts about their intention of granting an immediate pardon further supports the conclusion that Azerbaijan did not apply the convention in good faith.

31. Beyond the immediate diplomatic aftermath of the Safarov case, there is reason to be concerned that misuses of the convention for other purposes than those enunciated in the Preamble may entail negative repercussions for the overall use and operation of the convention. It may well be that States will in future be reluctant to transfer sentenced persons to Azerbaijan for fear that they will be pardoned in the manner Ramil

---

61. This principle in relation to reservations is derived from Article 21 of the Vienna Convention on the Law of Treaties, which reads in its relevant parts: "1. A reservation established with regard to another party … a) modifies for the reserving State in its relation with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation; and b) modifies those provisions op to same extent for that other party in its relations with the reserving State."
62. See List of declarations made in respect to treaty No. 112, *supra* footnote 19.
63. PC-OC, "Legal Opinion on the Convention on the Transfer of Sentenced Persons and principle of the reciprocity of reservations", 18 March 2013, PC-OC\Docs 2013\PC-OC (2013)3.
64. Article 2.*d* VCLT provides that: "1. For the purposes of the present Convention: 'reservation' means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."

Safarov was. As indicated above, international co-operation in the administration of justice is principally in the interest of the individuals concerned, as was acknowledged *inter alia* by the European Court of Human Rights in a case concerning a prisoner's transfer under the convention.[65]

3.3. Assessment of the application of the convention by Hungary

32. While the application of Article 12 of the Convention on the Transfer of Sentenced Persons to effectuate Ramil Safarov's immediate pardon and release upon transfer, though not *per se* constituting a breach of the convention, cannot be regarded as an appropriate use of it by Azerbaijan, the Safarov case also raises issues pertaining to the application of the convention by the sentencing State, namely Hungary.

33. Formally, Hungary did not act contrary to the Convention on the Transfer of Sentenced Persons, nor to international law more broadly. The conditions for transfer as laid down in Article 3 of the convention were met in the Safarov case. According to that provision, a sentenced person may be transferred under the convention if the following conditions are met: 1) the person is a national of the administering State; 2) the judgment is final; 3) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or the sentence is indeterminate; 4) the transfer is consented to by the sentenced person or, in case of incapacity, by his or her legal representative; 5) the acts or omissions which led to the sentence constitute a criminal offence according to the law of the administering State; and 6) the sentencing and administering States agree to the transfer.

34. As noted above, Hungary transferred Mr Safarov on the assumption that his sentence would continue to be enforced in Azerbaijan, and that he would spend at least 25 years in prison. Yet, the question may legitimately be raised as to whether the Hungarian authorities could and ought to have foreseen the possibility that Ramil Safarov would be released upon his transfer and in fact given rewards for his crime. An assessment of this question hinges on whether the assurances that the convict would remain in prison which Hungary maintains having received by the Azerbaijani authorities were adequate in the specific circumstances of the Safarov case.

35. It appears that the assurances were limited to stating in general terms the manner in which sentences issued abroad are enforced in Azerbaijan. Inasmuch as they confirmed that the State follows the procedure laid down in Article 9.1.*a* of the Convention, they corresponded to Azerbaijan's Declaration (see paragraph 9 above) and contained the information that an administering State is obliged to provide in any event, pursuant to Articles 6.1.*c* and 9.2 of the Convention, upon request of the sentencing State. This information primarily serves to verify whether all the conditions for transfer have been met in order to facilitate the sentencing State's decision on whether or not to agree to a transfer.[66] There is reason to doubt that this information provided adequate assurances in the Safarov case.

36. However, as mentioned above, the Azerbaijani authorities also indicated to Hungary that national law provided that a life sentence could only be replaced by a court with a term of imprisonment for a specified period or the convict could be released on conditional parole only after serving at least 25 years in prison. Irrespective of whether or not one qualifies these statements as assurances, Hungary, as a State Party to the convention, must have known that information on the enforcement of a sentence was subject to any later decision of the administering State on granting a pardon, for instance. This is particularly true given that the letter from the Azerbaijani authorities made no specific mention of Article 12 of the convention.

37. It remains debatable whether Hungary should have based its decision to transfer Ramil Safarov on the inconclusive declarations made by the Azerbaijani authorities. The suspicion that the assurances may not have been appropriate in the specific case of Ramil Safarov is corroborated by the fact that there appear to have been obvious indications that Mr Safarov would be welcomed as a national hero on his return. Most notably, the murder of Gurgen Margayan had generated widespread public praise from high-ranking Azerbaijani State officials, including the Azerbaijani Ombudsman[67] and the Permanent Representative of Azerbaijan to the Council of Europe.[68] Hungary must have been aware of this, especially given that the Armenian authorities maintained that they had informed their Hungarian counterparts on numerous occasions about the glorification in Azerbaijan of Mr Safarov's deed.[69]

---

65. *Drozd and Janousek v. France and Spain*, Application No. 12747/87, judgment of 26 June 1992, paragraph 110.
66. Explanatory Report, *supra* footnote 51, paragraph 37.
67. *Zerkalo Newspaper*, 28 February 2004, as cited in OSCE Office for Democratic Institutions and Human Rights, "Anti-Armenian propaganda and hate dissemination carried out by Azerbaijan as a serious obstacle to the negotiation process", HDIM.DEL/382/08, 7 October 2008; Grigorian M. and Oruyev R., "Murder Case Judgment Reverberates Around Caucasus", 20 April 2006.
68. *Zerkalo Newspaper*, 23 February 2004, op. cit.

38. For these reasons, and also keeping in mind the consistent practice of the European Court of Human Rights of closely assessing whether diplomatic assurances provide, in practice, sufficient guarantees in the particular circumstances of a given case,[70] Hungary can be criticised for not having requested more stringent assurances from the Azerbaijani authorities. It would have been within Hungary's discretionary powers to refuse the transfer of Mr Safarov. As mentioned above, the convention does not impose an obligation on Contracting States to transfer prisoners, but merely requires them to co-operate.[71] This can be derived *inter alia* from Article 2.1 of the convention, which states that: "The Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Convention."

39. Moreover, the question can be raised as to the adequacy of Hungary's response to Ramil Safarov's pardon and release, in particular whether it was sufficient for the authorities to summon the Azerbaijani Ambassador. Admittedly, Hungary's possibilities for action once Mr Safarov's transfer had been completed were limited by the fact that, pursuant to Article 8 of the convention, the enforcement of the sentence falls within the sole responsibility of the administering State. In the same vein, Article 9.3 of the convention provides that: "The enforcement of the sentence shall be governed by the law of the administering State and that State alone shall be competent to take all appropriate decisions."

4. Possible measures to prevent future misuse of the convention

40. In light of the foregoing considerations, there is sufficient ground for concluding that Ramil Safarov's transfer to Azerbaijan and subsequent pardon and release was the result of an improper use of Article 12 of the Convention on the Transfer of Sentenced Persons. That said, I will now turn to examining how such occurrences can be prevented in future.

41. Any measures to prevent the improper use of the Convention on the Transfer of Sentenced Persons, in particular of its Article 12, must not have a negative impact on the functioning of the convention. Most notably, any such measure should be designed to ensure that the convention maintains its flexibility and discretionary nature, which are widely accepted to be among its key advantages,[72] and that its practical application is not rendered ineffective by imposing unduly strict conditions on transfers.

42. The appropriateness of means to prevent the misuse of Article 12 of the convention will furthermore depend on whether one regards the Safarov case as an exceptional case unlikely to be followed by others, or as a precedent highlighting that the problem was inherent in the wording of this provision. At the exchange of views of the committee in December 2013, Mr Selvaggi emphasised the political and diplomatic nature of the issues raised by the Safarov case, which had been influenced by international and historic relations. Indeed, against the background of the specific circumstances surrounding the Safarov case, including *inter alia* the fact that it involved a third State (namely Armenia),[73] it would appear that this case did not set a precedent for similar instances of improper use of the convention. On the contrary, States Parties to the convention will in all likelihood be reluctant to risk creating a diplomatic incident as has occurred between Armenia and Hungary over Ramil Safarov's transfer and the general condemnation by the international community (as described above).

---

69. Note verbale from the Permanent Mission of the Republic of Armenia to the United Nations Office and other international organizations in Geneva, *supra* footnote 10, pp. 1-2; Statement of the Ministry of Foreign Affairs of Armenia, Ministry of Foreign Affairs of the Republic of Armenia, 31 August 2012.

70. See, *inter alia,Chahal v. the United Kingdom*, Application No. 22414/93, judgment of 15 November 1996, paragraph 105; *Saadi v. Italy*, Application No. 37201/06, judgment of 28 February 2008 [Grand Chamber], paragraph 148.

71. See the presentation given by Ms Joana Ferreira (Portugal) on "The future of the Convention on the transfer of sentenced persons: options for improvement (second additional protocol, recommendation, practical guidelines)" at the Special Session of the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters(PC-OC) on the transfer of sentenced persons (ETS No. 112), 27 November 2013.

72. See, *inter alia*, Committee of Ministers, *supra* footnote 57; and Opinion by the PC-OC on PACE Recommendation 1527 (2001) on the operation of the Council of Europe Convention on the Transfer of Sentenced Persons, p. 2.

73. Since Hungary must have been aware that there were some political issues at stake in the Safarov case involving Armenia, consideration could also be given to the question of whether Hungary should have notified the Armenian authorities in advance about their intention to transfer Mr Safarov. Armenia claims that they were only informed on the day of his transfer, prior to which the Hungarian authorities had consistently assured them that Ramil Safarov would not be transferred. See Remarks by the President of the Republic of Armenia, Serzh Sargsyan, at the Meeting with the Heads of Diplomatic Missions, *supra* footnote 14; Statement of the Ministry of Foreign Affairs of Armenia, *supra* footnote 69; Note verbale from the Permanent Mission of the Republic of Armenia to the United Nations Office and other international organisations in Geneva, *supra* footnote 10, pp. 1-2.

43. Article 12 can be interpreted and applied in a manner consistent with the spirit of the convention and the rule of law, and in fact it usually is. Consequently, there is no need to propose the amendment of the convention given that the right to pardon is seen as a sovereign right. Amending the convention may entail the risk that some of the 64 Contracting States, which comprise 46 of the 47 Council of Europe member States, as well as 18 non-member States ranging from Australia to Panama and the United States of America[74] (making the Convention on the Transfer of Sentenced Persons one of the Council of Europe's most ratified conventions), could withdraw from the treaty. This, in turn, would run counter to the *raison d'être* of the convention, namely the aim of promoting the widest possible use of the convention for the sake of the humanitarian purposes it pursues.

44. That said, different means of ensuring that Article 12 of the convention is not misused in the manner it was in the Safarov case can be envisaged. States negotiating a transfer under the convention could conclude an ad hoc arrangement on the enforcement of sentences in the form of an addendum to the agreement between the sentencing and administering States. Such an arrangement would stipulate certain more stringent assurances by the administering State to abide by the general principles of the convention. It may contain information on both general practices as well as on intentions in a specific case at hand regarding pardons and/or amnesties. It could, for example, be envisaged that the administering State should be required to indicate any intention to grant a pardon or amnesty to the person concerned, or even to undertake not to exercise its rights under Article 12 of the convention before the convicted person has spent a certain minimum time of his/her sentence in the administering State. These matters deserve clarification prior to a transfer, as the sentencing State has no competence for enforcing the sentence once the authorities of the administering State have taken charge of the convicted person.[75] This recommendation would aim at encouraging States to co-operate fully in implementing the convention while clarifying and, if need be, specifying their commitment to the object and purpose of the convention.

5. Conclusions

45. The case of Ramil Safarov demonstrates that Article 12 of the Convention on the Transfer of Sentenced Persons, which provides for the granting of pardons and amnesties, can be misused to effectuate the immediate release of a sentenced person upon transfer for purposes other than social rehabilitation so as to ensure justice. Such a use of the convention is incompatible with the aim of Article 12 and the spirit of the convention. Whilst we have seen that the Safarov case is unlikely to have set a precedent, and that Article 12 is not per se incompatible with the convention's object and purpose, measures should be taken to prevent future instances of improper use of this provision.

46. The proper functioning of the Convention on the Transfer of Sentenced Persons depends on negotiations in good faith between Contracting States, and strict adherence to the principles of the rule of law. States Parties to the convention should therefore, in particular in cases with potential political or diplomatic implications, be encouraged to conclude ad hoc arrangements on the enforcement of sentences stipulating clear assurances by the administering State to abide by the general principles of the convention, including in the application of its Article 12. Such an arrangement may include information on intentions in the case at hand regarding pardons and/or amnesties, or even an undertaking by the administering State not to exercise its prerogative(s) under Article 12 of the convention before the convicted person has served a certain minimum time of his/her sentence.

47. In the interest of international co-operation in the penal field, and for the benefit of the numerous cases in which its application provides humanitarian relief by facilitating the transfer of prisoners and the continued enforcement closer to home of prison sentences handed down abroad, the convention deserves the Assembly's continued support. The convention's success depends largely on its flexibility. A deletion or general restriction of Article 12 is therefore not advisable. Instead, the draft resolution and recommendation propose the conclusion of ad hoc arrangements to discourage abusive use of this provision, as had occurred in the Safarov case.

---

74. For an overview of the current signatures and ratifications, see: www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=112&CM=8&DF=29/04/2013&CL=ENG.

75. Article 8 of the convention reads: "1. The taking into charge of the sentenced person by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State. 2. The sentencing State may no longer enforce the sentence if the administering State considers enforcement of the sentence to have been completed." Indeed, in certain cases the involvement of a third State in such negotiations might be advisable. Such involvement could, from a technical/legal point of view, complicate matters, but there might be, in certain circumstances, the need to avoid an "obscure" agreement between a sentencing and an administering State (see, in this connection, footnote 73 above).