

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (92) 18

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

CONCERNING THE PRACTICAL APPLICATION OF THE CONVENTION

ON THE TRANSFER OF SENTENCED PERSONS

*(Adopted by the Committee of Ministers on 19 October 1992
at the 482nd 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;

Restating the importance of the social rehabilitation of sentenced persons and to that end the transfer of such persons, where they do not have the nationality of the sentencing state, to the country where their own society is;

Desirous therefore of further facilitating the practical application of the convention within such a lapse of time as may enable the intended aim to be achieved;

Recalling the terms of its Recommendation No. R (88) 13 concerning the practical application of the Convention on the Transfer of Sentenced Persons;

Having in mind its Recommendation No. R (84) 11 concerning information about the Convention on the Transfer of Sentenced Persons,

1. Recommends the governments of member states:

a. to include with other necessary documents the form reproduced in Appendix I hereafter both when making a request for transfer and when acknowledging receipt of such a request;

b. to proceed diligently and urgently in processing requests for transfer in such a way that the provisions of Article 5, paragraph 4, of the convention are entirely complied with;

c. to adopt, in accordance with the principles laid down in Appendix II hereafter, guidelines on the criteria to be met when taking a decision whether or not to agree to transfer requests submitted to them;

d. to communicate the text of such guidelines, as well as any future amendments thereto, to the Secretary General of the Council of Europe;

e. as far as possible and without prejudice to the rules in the convention, to give reasons for all decisions refusing a transfer;

f. to take steps enabling them not to have to refuse a transfer on the sole grounds that fines imposed on the sentenced person in connection with his sentence remain unsatisfied, or that *contrainte par corps* has been imposed;

g. when handing over the transferred person, to give the administering state an updated statement in conformity with Article 6, paragraph 2.*b*);

h. as far as possible, to make available to their nationals – before the latter have given their consent to a transfer – precise and easily comprehensible information on the rules that will be applied to them with respect to determining the length of the sentence to be served as well as the terms and conditions of enforcement of the sentence in the event of them being transferred;

i. to encourage direct contacts between national administrations entrusted with the operation of the convention, in particular through the informal channels of communication that are available to them through the lists mentioned below in item 2.*a*;

j. to enlarge and improve on the “Standard text providing information about the Convention on the Transfer of Sentenced Persons” provided for in Recommendation No. R (84) 11 in such a way as to make its content easily comprehensible to all and to ensure that the person concerned is advised that the conditions for being eligible for parole, conditional release, etc. in the administering state will differ from those applicable in the sentencing state;

k. unless otherwise provided for through national law, international conventions or bilateral agreements, when the transferred person has escaped custody and left the territory of the administering state, and when that state is unable to obtain custody to enforce completion of the sentence, it shall inform the sentencing state that the enforcement of the sentence cannot be completed, and the sentencing state may then enforce completion of the sentence. This does not obviate the need to inform the sentencing state in accordance with Article 15.*b*;

2. Instructs the Secretary General of the Council of Europe:

a. to keep an updated list containing precise information on the names and addresses as well as the telephone, telefax and telex numbers of the persons responsible in each Party for the operation of the convention and to transmit a copy of such a list as well as any necessary updates to each of these persons;

b. to transmit to the governments of all the Parties to the convention copies of the national guidelines that will be communicated to him under the terms of Recommendation 1.*d* above;

c. to transmit this recommendation to the governments of the non-member states which are Parties to the convention as well as to the governments of states invited to accede to the convention.

Appendix I to Recommendation No. R (92) 18

**Council of Europe Convention
on the Transfer of Sentenced Persons**

Acknowledgement of request for information about prisoner repatriation

Name of prisoner :

Prisoner number* :

Location* :

Requesting state :	Requested state :
Name :	Name :
Position :	Position :
Address :	Address :
.....
.....
No. Tel.:	No. Tel.:
No. Fax:	No. Fax:
Date request made :	Date request received :
Originator's reference :	Recipient's reference :
Officer responsible for further action in the requested state (if not addressee):	
Name :	
Position :	
Address :	
.....	
No. Tel.:	
No. Fax:	
Summary of action now being taken :	
.....	
.....	
.....	
Date by which next response may be expected :	
Reference to be quoted in correspondence :	
.....	

Signature : **Name :** **Date :**

Note: The original of this acknowledgement should be signed and returned to sender in the requesting state within five working days of receipt. The copy should be retained by the requested state.

* if known.

Appendix II to Recommendation No. R (92) 18

*Principles applicable to national guidelines
concerning the criteria to be met when taking a decision
whether to accept or to refuse a request for transfer*

1. The guidelines should indicate:
 - a. whether the Party applies continued enforcement under Article 10 of the convention or converts the sentence under Article 11 of the convention;
 - b. any deviation consented upon from the provisions of Article 6 of the convention or to the requirements stated in conformity with Article 17, paragraph 3, by way of which information and supporting documents might not be totally or partially translated.
2. The guidelines might *inter alia* indicate:
 - a. the mandatory grounds for refusing requests;
 - b. the usual grounds for refusing requests, for example, that the Party concerned will refuse transfer of those of its nationals that have left or remained outside their country with the intention of abandoning it as their place of permanent residence and/or have no social or family ties there.