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DOCUMENT 1-90/84

Report

drawn up on behalf of the Legal Affairs Committee

on the transfer of convicted prisoners

Rapporteur: Mr H. O. VETTER

PE 88.173/fin.
Or. De.

At its sitting of 20 May 1983, the European Parliament referred the motion for a resolution tabled by Mr Tyrrell and Mr Purvis (Doc. 1-348/83) pursuant to Rule 47 of the Rules of Procedure to the Legal Affairs Committee as the committee responsible and to the Political Affairs Committee for an opinion.

At its meeting of 20/21 June 1983, the committee appointed Mr Vetter rapporteur.

The draft report was considered at the meeting of 21/22 February 1984. At the meeting of 21/22 March 1984, the motion for a resolution was adopted unanimously, and it was decided to make reference also to the motions for resolutions of 16 February 1983 by Mr BLANEY and others on right to imprisonment near place of origin (Doc. 1-1298/82), of 20 January 1983 by Mr PURVIS and others on Community prisons and prisoners - conditions and rehabilitation procedures during and after imprisonment (Doc. 1-1160/82), and of 12 November 1979 by Mrs BONINO and others on conditions in prisons in Community countries (Doc. 1-486/79).

The following took part in the vote: Mrs Veil (chairman); Mr Luster, (vice-chairman); Mr Vetter (rapporteur); Mr Donnez, Mr Geurtsen, Mr Prout, Mr Tyrrell and Mr Vié.

At its meeting of 28-30 September 1983, the Political Affairs Committee decided not to deliver an opinion, as did the Committee on Social Affairs and Employment, on 24 February 1984, with respect to Doc. 1-1160/82.

The report was tabled on 27 March 1984.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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Annex I: Motion for a resolution Doc. 1-348/83

Annex II: Motion for a resolution Doc. 1-1298/82

Annex III: Motion for a resolution Doc. 1-1160/82

Annex IV: Motion for a resolution Doc. 1-486/79

Annex V: Convention on the transfer of sentenced persons

- for information (Official Danish, Greek and Italian versions were not available at the time of preparation of this draft report).

A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement

MOTION FOR A RESOLUTION

on the transfer of convicted prisoners

The European Parliament,

- having regard to the motion for a resolution by Mr TYRRELL and Mr PURVIS on transfer of convicted prisoners (Doc. 1-348/83), of 19 May 1983, and to the motions for resolutions of 16 February 1983 by Mr BLANEY and others on right to imprisonment near place of origin (Doc. 1-1298/82), of 20 January 1983 by Mr PURVIS and others on Community prisons and prisoners - conditions and rehabilitation procedures during and after imprisonment (Doc. 1-1160/82) and of 12 November 1979 by Mrs BONINO and others on conditions in prisons in Community countries (Doc. 1-486/79),

- having regard to the report of the Legal Affairs Committee (Doc. 1-90/84),

(a) having regard to:

- the International Covenant on Civil and Political Rights, concluded by the United Nations on 19 December 1966, and in particular to Article 10, paragraph 3 thereof, relating to the treatment of prisoners,

- the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, and in particular to Article 3 thereof, which forbids inhuman punishment,

(b) having regard to the Joint Declaration of 5 April 1977 by the European Parliament, the Council and the Commission of the European Communities on the protection of fundamental rights¹,

¹ See Treaties establishing the European Communities, 1978 edition, p. 214

- (c) having regard to the case law of the Court of Justice of the European Communities on the application and protection of fundamental rights¹,
- (d) having regard to its resolution of 9 July 1982 on the European judicial area², and in particular to paragraph 10 thereof, concerning, among other things, the transfer of prisoners,
- (e) having regard to Article 220 of the EEC Treaty (the protection of persons and the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals) and Article 230 of the same Treaty (appropriate forms of cooperation with the Council of Europe),

1. Calls on the Member States of the European Community to pursue further their cooperation in the field of criminal law, and especially the enforcement of penalties, by ratifying the Convention on the Transfer of Sentenced Persons concluded by the Council of Europe and opened for signature on 21 March 1983;

2. Stresses that this cooperation in the enforcement of penalties must further both the interests of justice in the Community and the social reintegration of Community citizens convicted of offences;

3. Takes the view,

(a) that these aims demand that Community citizens serving a custodial sentence for committing a criminal offence must be given the possibility of serving the sentence imposed on them in their country of origin or their habitual country of residence;

(b) that, given the bond which may in practice exist between a convicted Community citizen and his country of origin or his habitual country of residence, the Member States should avail themselves of the provision contained in Article 3, paragraph 4 of the Convention and in a 'joint

¹ cf judgment of the Court of Justice of 26 June 1980, Case 136/79 National Panasonic v Commission, (1980) ECR 5, p. 2057, par. 18

² See OJ No. C 238, 13 September 1982, p. 83

declaration by the Member States of the European Community' so define the term 'national' for the purposes of the Convention that it covers both nationals within the meaning of the law and citizens of the Community habitually resident on its sovereign territory;

(c) that the Community Member States, to avoid additional court proceedings, administrative work and costs in the conversion of sentences imposed in the Member States, should in the abovementioned 'joint declaration' stipulate their intention to apply only the procedure of continued enforcement of a sentence (Article 10 of the Convention) in their dealings with each other, disregarding that of the conversion of the sentence imposed (Article 11 of the Convention) (declaration pursuant to Article 3, paragraph 3, of the Convention concerning Article 9, paragraph 1(a));

(d) that the Member States should specify in their 'joint declaration' that the sentenced person shall have the right to consult a lawyer of his choice before agreeing to be transferred;

4. States its opinion that the 'joint declaration by the Member States of the European Community' on 'nationality' for the purposes of the Convention, on 'continued enforcement and on the right to consult a lawyer prior to the transfer' may be devised by the competent Ministers in negotiations on the basis of Article 220 of the EEC Treaty;
5. Points out that the sentencing State is obliged to inform every sentenced person to whom the Convention may be applicable of the substance of both the Convention and the 'joint declaration by the Member States of the European Community (Article 4, paragraph 1 of the Convention);
6. Calls on the Commission of the European Communities to afford every appropriate form of assistance to the competent Council of Ministers, so that the necessary negotiations can be brought to a rapid conclusion, coinciding if at all possible with the ratification of the Convention by the Member States, and to brief Parliament, through its Legal Affairs Committee, on the opening and progress of the negotiations;
7. Instructs its President to forward this resolution to the Commission, the Council, the Justice Ministers of the European Community meeting in political cooperation, the Council of Europe and the parliaments of the Member States.

EXPLANATORY STATEMENTI. INTRODUCTION AND BACKGROUND TO THE PROBLEM

1. The motion for a resolution (Doc. 1-348/83) by Mr Tyrrell and Mr Purvis on the transfer of convicted prisoners to their country of origin makes reference to the Council of Europe Convention on the transfer of sentenced persons, which was opened for signature on 21 March 1983.
2. In recital C of their motion for a resolution, the authors point out that, under the Treaties establishing the European Communities, individuals have been accorded a broad measure of freedom of movement and establishment. This has, however, also resulted in an increasing number of Community citizens being convicted of offences in a Member State other than their country of origin (cf. the figures quoted in point 5 below).
3. As is well known, the main object of imprisonment is to reintegrate the sentenced person into society. The chances of such reintegration are considerably diminished when the persons concerned have to serve their sentence outside their country of origin. The difficulties arising in a foreign penal institution from a foreign language, culture, religion, mentality, customs and usages frequently result in isolation. Foreign prisoners not versed in the local language cannot communicate with either other prisoners or prison officials, instructors or social workers. They can derive no benefit from foreign-language books, newspapers and radio programmes. Parole cannot generally be granted. Because they are detained a long way from their place of origin, they cannot or can only occasionally receive visits from relatives. After serving their sentence, these prisoners are often estranged from their surroundings, on release from prison they are normally deported from the country in which they had previously been resident¹.

¹ Bartsch,
Strafvollstreckung im Heimatstaat
Zu einem Ubereinkommen des Europarats, Neue Juristische
Wochenschrift (NJW), No. 10/84, 7 March 1984

4. The authors of the motion for a resolution are therefore quite right to observe that reintegration is made that much easier when the prisoner is able to communicate in his own language and receive visits from his family and friends (recital D).
5. A few figures will serve to illustrate the actual scale of the problem. According to a survey by the German court authorities, the proportion of foreign nationals who as at 16 February 1983 were serving prison sentences of more than 6 months amounted to approximately 8%. Over two thirds of these detainees originated from European countries: Turks (1,191), Italians (343) and Yugoslavs (288) take up the major shares in a total figure of 3,023 foreign nationals¹.

According to information from the Bundeshilfswerk für Straffällige (Federal welfare organization for persons convicted of offences), the numbers of German nationals convicted of offences and detained outside the Federal Republic in Member States of the European Community as at 1 January 1983 were as follows: Belgium 50, Denmark 4, France 400, Greece 101, United Kingdom (no information available), Ireland 2, Italy 100, Luxembourg 4 and the Netherlands 80.

6. Apart from the obvious difficulties with the reintegration of the prisoners concerned, account must also be taken of the considerable additional administrative burden occasioned for the penal institutions by the presence of foreign nationals.

II. INTERNATIONAL AND COMMUNITY LEGAL BASES

- 7(a) The International Covenant on Civil and Political Rights, concluded on 19 December 1966, states in Article 10(3) that:

'The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.'

¹ cf Wilkitzki; Rechtshilfe durch Vollstreckung, Juristische Rundschau (JR) 1983, 231

Under Article 3 of the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, no one shall be

'subjected to torture or to inhuman or degrading treatment or punishment.'

- (b) These international provisions for fundamental rights, which aim to protect human dignity in the enforcement of punishment, are also of relevance to the law of the Community and its citizens. The case law of the Court of Justice of the European Communities has constantly ruled that fundamental rights form an integral part of

'the general principles of law, the observance of which the Court of Justice ensures, in accordance with the constitutional traditions common to the Member States and with international treaties on which the Member States have collaborated or of which they are signatories'¹.

- (c) The Treaty establishing the European Economic Community stipulates in Article 220 that Member States shall, so far as is necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals ... the protection of persons ... and ... the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals ... (Article 220, first and fourth indents). In addition, Article 230 of the EEC Treaty states that the Community shall establish all appropriate forms of cooperation with the Council of Europe.

- (d) As long ago as 9 July 1982, the European Parliament in its resolution on the European judicial area called on the Commission of the European Communities to, among other things, make proposals for directives dealing with the transfer of prisoners. Parliament took the view in this context that 'all such directives should be supplementary to, but not in conflict with, the European Conventions negotiated within the Council of Europe' (see paragraphs 10 and 11 of the resolution)².

¹ Judgment of 26 June 1980 - Case 136/79, *National Panasonic v Commission* (1980) ECR 5, p. 2057, par. 18; judgment of 14 May 1974 - Case 4/73, *Nold v Commission* (1974) ECR 491

² OJ No. C 238, 13.9.1982, p. 83

III. THE COUNCIL OF EUROPE CONVENTION OF 21 MARCH 1983

- SIGNATORIES TO DATE:

8. This Convention derives from a suggestion by the 11th Conference of European Justice Ministers (held in Copenhagen on 21 and 22 June 1978) and was opened for signature on 21 March 1983 by the Committee of Ministers of the Council of Europe. By 26 March 1984, all the Member States of the European Community, with the exception of Ireland, had signed the Convention, as had Liechtenstein, Austria, Portugal, Sweden, Switzerland and Cyprus, all Member States of the Council of Europe. This Convention is what is known as an 'open' Convention, which means that States which are not members of the Council of Europe may accede to it. The USA and Canada availed themselves of this possibility when the Convention was opened for signature on 21 March 1983: on account of their experience with bilateral repatriation agreements, their observers collaborated in the drafting of the text within the Committee of Experts.

- AIMS OF THE CONVENTION:

9. The Convention aims to pursue 'international cooperation in the field of criminal law' and 'further the ends of justice and the social rehabilitation of sentenced persons' (see the second and third recitals of the Convention). These aims can be achieved only if 'foreigners who are deprived of their liberty as a result of their commission of a criminal offence are given the opportunity to serve their sentences within their own society' (see fourth recital).

In the opinion of the signatory States, these aims can best be achieved by having sentenced persons transferred to their own country (see fifth recital).

10. The Parties undertake to afford each other the widest measure of cooperation in respect of the transfer of sentenced persons (Article 2, paragraph 1).

- THE TRANSFER PROCEDURE:

11. The Convention sets out to allow a sentenced person to be transferred to the territory of another Party in order to serve the sentence imposed on him. The sentenced person may to that end express his interest to the sentencing or administering State in being transferred (Article 2, paragraph 2). The actual request for transfer may be submitted formally by either the sentencing or the administering State (Article 2, paragraph 3).
12. 'Sentencing State' means the State in which the sentence was imposed on the person who may be or has been transferred (Article 1.c.), 'administering State' means the State to which the sentenced person may be or has been transferred in order to serve his sentence (Article 1.d.)

- CONDITIONS FOR TRANSFER:

13. The conditions for transfer are laid down in Article 3. The sentenced person may in normal cases be transferred only if he is a national of the administering State.

The sole reference to the criterion of nationality is too narrow for the purposes of Community law. Numerous foreign nationals, and especially migrant workers, within the European Community, no longer have family and social ties in the country of which they are nationals, but have established them in the host country, their country of permanent residence. If nationality is understood purely in the narrow legal sense, this could create particular hardship for Community citizens or for their families.

It follows then that a German, say, who has been living for years with his family in Belgium, but is convicted of a criminal offence in Italy, must also be given the option of requesting a transfer to his country of habitual residence (Belgium), rather than that of which he is a national (Germany), where his family is no longer resident.

14. It should therefore be noted that Article 3, paragraph 4 of the Convention offers the possibility of defining the term 'national' for the purposes of the Convention. The Member States of the European

Community should so define nationality for the purposes of the Convention that it covers not only nationals within the meaning of the law, but also citizens of the Community habitually resident on its sovereign territory.

The internal frontiers of the Community are being opened up to an increasing extent, and practical experience has shown that people who have been deported from their country of permanent residence or on whom a ban on residence has been imposed after committing a criminal offence, tend to return to their previous place of habitual residence, a state of affairs which frequently gives rise to new legal difficulties.

15. The sentenced person or, in cases of physical or mental incapacity, his legal representative, must agree to the transfer. Under Article 7, paragraph 1, consent must be given 'voluntarily and with full knowledge of the legal consequences thereof'. To ensure that this provision is observed, the sentenced person must have the right to consult a lawyer of his choice. A stipulation to that effect should be included in the 'joint declaration by the Governments of the Member States'. Under Article 4, paragraph 1 of the Convention, the sentenced person would also have to be informed of this.
16. As further conditions for transfer, the judgment must be final and the sentence must have at least 6 months to run or be indeterminate (Article 3, paragraph 1(b) and (c)).
17. This provision takes into account the objective of rehabilitation as defined by the Convention. Effective measures to assist rehabilitation cannot be undertaken in cases where the sentence imposed is too short or has only a short period left to run. Nor can it be left out of consideration that transfers occasion costs (for transport and surveillance) which stand in sensible proportion to the desired aim only when the sentenced person is to be held in custody for a longer period of time¹.
18. The requirement of consent is designed to prevent authorities from using the transfer of a sentenced person as a covert form of extradition. A transfer against the will of the person concerned would run counter to its declared objective, namely to facilitate the reintegration of

prisoners into society. The international cooperation in the field of criminal law accorded under the Convention must therefore not only further the ends of justice in the contracting States, but also and above all serve the interests of the prisoners.

The sentencing State has to ensure that the persons required to give consent to the transfer do so 'voluntarily and with full knowledge of the legal consequences thereof' (Article 7, paragraph 1). Certainty in this area becomes all the more necessary, since the survey of 16 February 1983 (see point 5 above) among the foreign nationals serving sentences of more than six months in German penal institutions, only about one third of the detainees questioned would agree to a transfer, should the occasion arise².

- CONDUCT OF TRANSFER:

19. No transfer may take place until the sentencing and administering States agree to it (Article 3, paragraph 1.f.)

Once the sentenced person is taken into charge by the authorities of the administering State, the enforcement of the sentence is suspended in the sentencing State (Article 8, paragraph 1).

In principle, the competent authorities of the administering State have the choice of either continuing the enforcement of the sentence immediately or converting the decision by which the sentence was imposed, substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence (Article 9, paragraph 1.a. and b.).

¹ see Bartsch, loc. cit. III, (2)(a)

² see Wilkitzki, Rechtshilfe durch Vollstreckung, Juristische Rundschau 1983, p. 231

20. The European Community has professed itself to be a community of law, whose institutions¹ and Member States² respect fundamental rights. The Heads of State or Government solemnly declared 'that respect for and maintenance of ... human rights in each Member State are essential elements of membership of the European Communities'.

It can therefore be generally assumed that criminal offences are dealt with in similar fashion by the courts in the Member States and the judgments are delivered with equal precision.

To avoid additional court proceedings, administrative work and costs in the conversion of sentences imposed within the Community, the Member States should therefore include by common accord in their instruments of ratification an addendum to the effect that they intend only to continue to enforce sentences immediately. In the case of continued enforcement, the administering State is bound by the legal nature and duration of the sentence as determined by the sentencing State (Article 10, paragraph 1), although adaptation is nevertheless possible under certain specific conditions (Article 10, paragraph 2).

21. Sentences are enforced in accordance with the law of the administering State. That State alone is competent to take all appropriate decisions (Article 9, paragraph 3). If the administering State has completed the enforcement of a sentence, it may not be re-enforced in the sentencing State (Article 8, paragraph 2). This guarantees the exclusion of double punishment ('non bis in idem').³

¹ Joint Declaration of 5 April 1977 by the institutions of the Community on fundamental rights

² See the corresponding Declaration of 8 April 1978 by the Heads of State and Government meeting in the European Council - Bulletin of the European Communities, 3-1978, preliminary chapter or Bulletin of the European communities, supplement 2/79, accession of the Communities to the European Convention on Human Rights, p. 6, par. 2

³ Cf Parliament's resolution of 16 March 1984 on the application of the 'non bis in idem' principle in the European Community (PV 4, PE 89.405, p. 39)

22. Pardons and amnesties may be granted by each Party in accordance with its Constitution (Article 12).
23. The sentencing State alone has the right to decide on any application for review of the judgment (Article 13).
24. Articles 14 to 18 of the Convention cover the termination of enforcement, information on enforcement, transit and the rules on language and costs. The costs incurred in the application of the Convention are to be borne by the administering State, except for those incurred exclusively in the sentencing State (Article 17, paragraph 5).

- THE RATIFICATION PROCEDURE

25. The Convention requires ratification by three member States of the Council of Europe before it can enter into force (Article 18, paragraph 2).

All of the Member States of the European Community are member States of the Council of Europe. Given the Convention's aim of rehabilitating persons convicted of offences, and the better welfare possibilities afforded by enforcing sentences in the offender's country of origin or habitual residence, it would be desirable if the Member States of the Community were to ratify the Convention in substantially comparable terms, and issue a 'joint declaration by the Member States of the European Community , in which

- (a) 'nationality for the purposes of the Convention' is so defined as to cover nationals of the Member States within the meaning of the law and persons habitually resident on Community territory;
- (b) they state their intention to continue to enforce immediately the sentence imposed in a different Community Member State;
- (c) they stipulate that the sentenced person shall have the right to consult a lawyer of his choice before agreeing to be transferred.

26. These ends could be achieved by negotiations between the Justice Ministers of the Member States of the European Community, a course of action which would meet the demand expressed in paragraph 1 of the motion for a resolution. Article 220 of the EEC Treaty would provide the legal basis for such negotiations.
27. As is usual in the case of such negotiations, and in accordance with paragraph 5 of the motion for a resolution, the Commission of the European Communities must afford the Council of Justice Ministers every appropriate form of assistance, to ensure that these negotiations are brought to a swift conclusion.

MOTION FOR A RESOLUTION (Document 1-348/83)
tabled by Mr TYRRELL and Mr PURVIS
pursuant to Rule 47 of the Rules of Procedure

on transfer of convicted prisoners

The European Parliament,

- A - Noting that a Council of Europe Convention providing for the transfer of a foreign prisoner from the country in which he has been sentenced to his home country was opened for signature on 21st March 1983 at Strasbourg,
 - B - Noting that the Convention was signed by six Member States, notably Belgium, Denmark, Germany, Luxembourg, Greece and the Netherlands, and also by Austria, Portugal, Sweden, Switzerland, Canada and the United States,
 - C - Reaffirming the special quality of the relationship between the 10 Member States, the rights of movement and establishment conferred on their citizens, and the consequential likelihood that increasing numbers of these citizens will be sentenced in Member States other than their own,
 - D - Recognizing the importance of rehabilitation as an essential element in imprisonment, and believing that this is facilitated where the prisoner is able to communicate in his own language and receive visits from his family and friends,
 - E - Regretting that though the Council of Justice Ministers started discussions on this subject in 1978, they have failed to agree on a Community solution,
1. Requests the Council of Justice Ministers to continue their work on this subject with a view to achieving a solution in which all Member States may join;

2. Urges those Member States who have not signed the Convention to strive for early removal of the obstacles that they at present perceive as preventing them from doing so;
3. Calls on the Commission to give such assistance as it can to the Council of Justice Ministers to this end;
4. Instructs its President to forward this resolution to the Council, the Commission and the Governments of the Member States.

MOTION FOR A RESOLUTION (DOCUMENT 1-1298/82)

tabled by Mr BLANEY, Mr VANDEMEULEBROUCKE,
Mrs CASTELLINA, Mr CAPANNA, Mr GENDEBIEN,
Mr PANNELLA, Mr BALFE, Mrs CASTLE, Mr LOMAS,
Mr BOYES, Mrs CLWYD, Mr van MINNEN, Mr ALBERS,
Mrs DUPORT, Mrs DESOUCHES, Mrs VAN HEMELDONCK,
Mr LYNGE, Mr MARCOPOULOS, Mr DAVERN, Mr FLANAGAN,
Mr CRONIN, Mrs EWING, Mrs BOSERUP, Mr KYRKOS,
Mrs BADUEL GLORIOSO, Mrs SQUARCIALUPI,
Mrs CARETONI, Mr de GOEDE, Mr EISMA

'The European Parliament,

- A. reiterating its concern that basic human rights should be respected throughout the Community,
- B. considering in particular that the basic human rights of prisoners and their families deserve equal respect with those of other citizens,
- C. considering that the maintenance of family relationships is a basic right of prisoners and their families,
- D. considering that imprisonment far from a prisoner's home imposes on his or her family, in the effort to maintain contact, sacrifices and stresses which constitute cruel and inhuman treatment of those concerned,
- E. noting with regret that numbers of Irish Republican prisoners are serving long sentences in jails on the British mainland and are not permitted to opt for transfer to prisons near their homes,
 1. Calls on member governments to allow all prisoners to be transferred to prisons near their homes, whether in the same or in another member country, in order to permit regular visits by their families without unnecessary hardship,
 2. Instructs its President to forward this resolution to the Commission, the Council of Ministers, the governments of Member States and the European Commission and Court of Human Rights.'

MOTION FOR A RESOLUTION (DOCUMENT 1-1160/82)

tabled by Mr PURVIS, Mr PRICE, Mr KEY, Mrs EWING, Mr BEAZLEY,
Mr SIMPSON, Mrs PHLIX, Mr BALFOUR, Mr WELSH, Mr SEELER,
Mrs ROBERTS, Mrs SQUARCIALUPI, Mr KYRKOS, Mrs QUIN,
Mr GEROKOSTOPOULOS, Mr PAPAEFSTRATIOU, Mr TURNER, Mr DE GOEDE,
Mr ROGALLA, Mrs PANTAZI, Mr EISMA, Mr PAPANTONIOU, Mr VERONESI,
Mr BONACCINI and Mr TYRRELL

pursuant to Rule 47 of the Rules of Procedure

on Community prisons and prisoners - conditions and rehabilitation
procedures during and after imprisonment

The European Parliament,

- A. conscious of the social and financial cost of
crime in the European Community,
- B. considering that present methods of deterrents and
rehabilitation are largely ineffective in preventing
crime and especially return to crime by prisoners
after release,
- C. convinced that this situation could be improved by
a review of sentencing, custodial and rehabilitation
principles and methods,
- D. considering the free movement of Community citizens
and the increasing likelihood of their being
sentenced, imprisoned and rehabilitated in Member
States other than that of origin,
- E. convinced that the Community could make a useful
contribution by exchange of information and experience
and by certain coordinated action,

- F.** considering the role of the EEC Social Fund in training and retraining people, not excluding prisoners, for employment,
- 1.** Urges the Council of Ministers of Justice to meet and agree a concerted position regarding the various conventions of the Council of Europe which have not yet been ratified by all Member States and to pursue ratification throughout the European Community of those on which they do agree;
 - 2.** Urges Member States in particular to discuss standards and possible initiatives regarding:-
 - a)** prison conditions;
 - b)** training facilities;
 - c)** location of custody;
 - d)** sentencing;
 - e)** provision of accommodation and counselling facilities during the difficult transition from prison to civilian life;
 - f)** the position of prisoners' families;
 - 3.** Calls on the Commission to make a study of:-
 - a)** the adequacy and effectiveness of present systems in Member States of training offenders before and after release from custody with suggestions for Community action,
 - b)** comparisons between Community prison and aftercare systems as to their success in avoiding recidivism and reintroducing ex-offenders to civilian life and to employment in particular,
 - c)** whether the Social Fund needs to be more effectively utilised in dealing with the problem of offenders and ex-offenders,
 - d)** possible roles for the Community in coordinating Member State action, promoting experimental pilot projects and disseminating information,

- e) NGOs in the Community concerned with offenders and released offenders with the objective of encouraging better coordination and exchange of experience, perhaps under the aegis of a Community-wide umbrella organisation;
-
- 4. Calls on associations representing prison administrators in the Member States to set up an EEC-wide association so that the best experience can be more quickly spread throughout the Community;
 - 5. Asks its President to forward this motion for resolution to the Commission, Council of Ministers and President of the Council of Europe.

MOTION FOR A RESOLUTION (DOCUMENT 1-486/79)

tabled by Mrs BONINO, Mr CAPANNA and Mrs MACCIOCCHI

pursuant to Rule 25 of the Rules of Procedure

on conditions in prisons in Community countries

The European Parliament,

- considering that the fundamental rights recognized in the European Convention on Human Rights must be denied to no-one;
 - noting that tens of thousands of persons in the Community are at present deprived of their freedoms, as a consequence of the application of preventive detention systems, without having been tried;
 - noting, furthermore, that material conditions in prisons, for both convicts and persons in preventive detention, vary enormously from one member country to another;
 - noting also that there have recently been frequent demonstrations by prisoners in several member countries in protest against conditions of detention and that there is an alarmingly high suicide rate among prisoners;
1. Recommends its Legal Affairs Committee, in conjunction with the Sub-committee on Human Rights when it has been set up, to make every possible endeavour to present to Parliament, as soon as possible and at any rate before the end of 1980, a comprehensive report on the condition of prisoners in the Community countries;
 2. Recommends the Council of Ministers of Justice to consider as a matter of urgency the desirability of aligning conditions in prisons on the most liberal system existing in the Community and to give priority to this task over its work on the European judicial area.

Article 1

Definitions

For the purposes of this Convention :

- a. "sentence" means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence ;
- b. "judgment" means a decision or order of a court imposing a sentence ;
- c. "sentencing State" means the State in which the sentence was imposed on the person who may be, or has been, transferred ;
- d. "administering State" means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence.

Article 2

General principles

1. 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.
2. A person sentenced in the territory of a Party may be transferred to the territory of another Party, in accordance with the provisions of this Convention, in order to serve the sentence imposed on him. To that end, he may express his interest to the sentencing State or to the administering State in being transferred under this Convention.
3. Transfer may be requested by either the sentencing State or the administering State.

Article 3

Conditions for transfer

1. A sentenced person may be transferred under this Convention only on the following conditions :
 - a. if that person is a national of the administering State ;
 - b. if the judgment is final ;
 - c. if, 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 if the sentence is indeterminate ;
 - d. if the transfer is consented to by the sentenced person or, where in view of his age or his physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative ;
 - e. if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory ; and
 - f. if the sentencing and administering States agree to the transfer.
2. In exceptional cases, Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1.c.
3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, indicate that it intends to exclude the application of one of the procedures provided in Article 9.1.a and b in its relations with other Parties.
4. Any State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define, as far as it is concerned, the term "national" for the purposes of this Convention.

Article 4

Obligation to furnish information

1. Any sentenced person to whom this Convention may apply shall be informed by the sentencing State of the substance of this Convention.
2. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Convention, that State shall so inform the administering State as soon as practicable after the judgment becomes final.
3. The information shall include :
 - a. the name, date and place of birth of the sentenced person ;
 - b. his address, if any, in the administering State ;
 - c. a statement of the facts upon which the sentence was based ;
 - d. the nature, duration and date of commencement of the sentence.
4. If the sentenced person has expressed his interest to the administering State, the sentencing State shall, on request, communicate to that State the information referred to in paragraph 3 above.
5. The sentenced person shall be informed, in writing, of any action taken by the sentencing State or the administering State under the preceding paragraphs, as well as of any decision taken by either State on a request for transfer.

Article 5

Requests and replies

1. Requests for transfer and replies shall be made in writing.
2. Requests shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State. Replies shall be communicated through the same channels.
3. Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, indicate that it will use other channels of communication.
4. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

Article 6

Supporting documents

1. The administering State, if requested by the sentencing State, shall furnish it with :
 - a. a document or statement indicating that the sentenced person is a national of that State ;
 - b. a copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory ;
 - c. a statement containing the information mentioned in Article 9.2.
2. If a transfer is requested, the sentencing State shall provide the following documents to the administering State, unless either State has already indicated that it will not agree to the transfer :
 - a. a certified copy of the judgment and the law on which it is based ;
 - b. a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence ;
 - c. a declaration containing the consent to the transfer as referred to in Article 3.1.d ; and
 - d. whenever appropriate, any medical or social reports on the sentenced person, information about his treatment in the sentencing State, and any recommendation for his further treatment in the administering State.
3. Either State may ask to be provided with any of the documents or statements referred to in paragraphs 1 or 2 above before making a request for transfer or taking a decision on whether or not to agree to the transfer.

Article 7

Consent and its verification

1. The sentencing State shall ensure that the person required to give consent to the transfer in accordance with Article 3.1.d does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State.

2. The sentencing State shall afford an opportunity to the administering State to verify, through a consul or other official agreed upon with the administering State, that the consent is given in accordance with the conditions set out in paragraph 1 above.

Article 8

Effect of transfer for sentencing State

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.

Article 9

Effect of transfer for administering State

1. The competent authorities of the administering State shall :
 - a. continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10, or
 - b. convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11.
2. The administering State, if requested, shall inform the sentencing State before the transfer of the sentenced person as to which of these procedures it will follow.
3. 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. Any State which, according to its national law, cannot avail itself of one of the procedures referred to in paragraph 1 to enforce measures imposed in the territory of another Party on persons who for reasons of mental condition have been held not criminally responsible for the commission of the offence, and which is prepared to receive such persons for further treatment may, by way of a declaration addressed to the Secretary General of the Council of Europe, indicate the procedures it will follow in such cases.

Article 10

Continued enforcement

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 law 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.

Article 11

Conversion of sentence

1. In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority :

a. shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State ;

b. may not convert a sanction involving deprivation of liberty to a pecuniary sanction ;

c. shall deduct the full period of deprivation of liberty served by the sentenced person ;
and

d. shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.

2. If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure.

Article 12

Pardon, amnesty, commutation

Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

Article 13

Review of judgment

The sentencing State alone shall have the right to decide on any application for review of the judgment.

Article 14

Termination of enforcement

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 15

Information on enforcement

The administering State shall provide information to the sentencing State concerning the enforcement of the sentence :

a. when it considers enforcement of the sentence to have been completed ;

b. if the sentenced person has escaped from custody before enforcement of the sentence has been completed ; or

c. if the sentencing State requests a special report.

Article 16

Transit

1. A Party shall, in accordance with its law, grant a request for transit of a sentenced person through its territory if such a request is made by another Party and that State has agreed with another Party or with a third State to the transfer of that person to or from its territory.

2. A Party may refuse to grant transit :
 - a. if the sentenced person is one of its nationals, or
 - b. if the offence for which the sentence was imposed is not an offence under its own law.
3. Requests for transit and replies shall be communicated through the channels referred to in the provisions of Article 5.2 and 3.
4. A Party may grant a request for transit of a sentenced person through its territory made by a third State if that State has agreed with another Party to the transfer to or from its territory.
5. The Party requested to grant transit may hold the sentenced person in custody only for such time as transit through its territory requires.
6. The Party requested to grant transit may be asked to give an assurance that the sentenced person will not be prosecuted, or, except as provided in the preceding paragraph, detained, or otherwise subjected to any restriction on his liberty in the territory of the transit State for any offence committed or sentence imposed prior to his departure from the territory of the sentencing State.
7. No request for transit shall be required if transport is by air over the territory of a Party and no landing there is scheduled. However, each State may, by a declaration addressed to the Secretary General of the Council of Europe at the time of signature or of deposit of its instrument of ratification, acceptance, approval or accession, require that it be notified of any such transit over its territory.

Article 17

Language and costs

1. Information under Article 4, paragraphs 2 to 4, shall be furnished in the language of the Party to which it is addressed or in one of the official languages of the Council of Europe.
2. Subject to paragraph 3 below, no translation of requests for transfer or of supporting documents shall be required.
3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, require that requests for transfer and supporting documents be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language in addition to the official language or languages of the Council of Europe.
4. Except as provided in Article 6.2.a, documents transmitted in application of this Convention need not be certified.
5. Any costs incurred in the application of this Convention shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State.

Article 18

Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
3. In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 19

Accession by non-member States

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States, may invite any State not a member of the Council and not mentioned in Article 18.1 to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 20

Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 21

Temporal application

This Convention shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

Article 22

Relationship to other Conventions and Agreements

1. This Convention does not affect the rights and undertakings derived from extradition treaties and other treaties on international co-operation in criminal matters providing for the transfer of detained persons for purposes of confrontation or testimony.
2. If two or more Parties have already concluded an agreement or treaty on the transfer of sentenced persons or otherwise have established their relations in this matter, or should they in future do so, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention.
3. The present Convention does not affect the right of States party to the European Convention on the International Validity of Criminal Judgments to conclude bilateral or multilateral agreements with one another on matters dealt with in that Convention in order to supplement its provisions or facilitate the application of the principles embodied in it.
4. If a request for transfer falls within the scope of both the present Convention and the European Convention on the International Validity of Criminal Judgments or another agreement or treaty on the transfer of sentenced persons, the requesting State shall, when making the request, indicate on the basis of which instrument it is made.

Article 23

Friendly settlement

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its application.

Article 24

Denunciation

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
3. The present Convention shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

Article 25

Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Convention and any State which has acceded to this Convention of :

- a. any signature ;
- b. the deposit of any instrument of ratification, acceptance, approval or accession ;
- c. any date of entry into force of this Convention in accordance with Articles 18.2 and 3, 19.2 and 20.2 and 3 ;
- d. any other act, declaration, notification or communication relating to this Convention.

**In witness whereof the undersigned,
being duly authorised thereto, have signed
this Convention.**

**Done at Strasbourg, this 21st day of
March 1983, in English and French, both
texts being equally authentic, in a single copy
which shall be deposited in the archives of
the Council of Europe. The Secretary General
of the Council of Europe shall transmit certi-
fied copies to each member State of the
Council of Europe, to the non-member States
which have participated in the elaboration of
this Convention, and to any State invited to
accede to it.**