



TRANSFER OF SENTENCE (REPATRIATION) - UPDATE

Background

Serving a prison sentence abroad is difficult for both the prisoner and his or her family. Prisoners may face language barriers, an unfamiliar legal system and loneliness among other problems. Many families cannot afford to visit their family member at all. This adds to the anxiety and stress of having a family member in prison.

The Council of Europe Convention on the Transfer of Sentenced Persons came into force in 1985 and allows prisoners to be transferred to serve their sentence in their own country. Ireland ratified the Convention on passing the Transfer of Sentenced Persons Act 1995. Other countries that have ratified the Convention include all EU Member States, the United States, Australia, Japan and Turkey.

In order for a transfer to take place, the prisoner, the sentencing country and the prisoner's home country must all agree to the transfer. The prisoner's consent must be given freely and in writing. However there is no right to transfer and the sentencing state or the prisoner's home country may refuse the application.

Since the Transfer of Sentenced Persons Act was passed, 154 prisoners have been transferred to serve their sentence here. This is less than one third of all applications. While 80 prisoners were transferred in the first five years after the Act was passed, the numbers being returned to serve the remainder of their sentence here declined considerably in recent times with only 13 being transferred since 2011.

Legal developments

The processing of applications was put 'on hold' after the Supreme Court decision in *O'Farrell v Governor of Portlaoise Prison* in July 2016, while the Government considered the implications of its unsuccessful appeal and the majority judgments of the Court.

In *O'Farrell*, the Supreme Court held that the warrants used to detain the prisoners were defective and these defects could not be remedied nor the warrants adapted after the prisoners had been transferred, on the basis that the adaptations sought went to the nature and duration of the sentences and were not merely procedural in nature.

In 2014, the Supreme Court also found against the State in relation to its application of determinate sentences received by Irish citizens in the UK who were transferred to Ireland. Essentially the Court found determinate sentences to be made up of two equal parts – a period of imprisonment followed by a period of time in the community on licence. Hitherto, prisoners transferred back to an Irish prison were spending considerably longer in prison than they would have had they remained in the UK, as licence is not a feature of Irish sentencing and the remission rate is ordinarily one quarter of any sentence handed down.

Current position

The Department of Justice and Equality recently advised the ICPO that it is considering an amendment to the current Transfer of Sentenced Persons legislation to provide for the adaptation of a prisoner's sentence at any time before or after the prisoner has been transferred to Ireland. All applications for transfer to Ireland irrespective of the country where the person is imprisoned are on hold until legislation is amended. The Department was unable to provide a timeframe in which the change to legislation would take place.

The Department also indicated that these changes would be considered in the context of the European Union Framework Decision 2008/909 which governs the transfer of prisoners among EU Member States. The 'Heads' (key areas to be covered by the legislation) of a Bill to transpose the Framework Decision have been approved since December 2013 but it has not yet being brought before the Dáil.

Imprisonment for Public Protection (IPP) Prisoners

The Department of Justice informed ICPO that they did not believe IPP prisoners in the UK with Indeterminate Sentences for Public Protection (ISPP) can be repatriated as the adaptation of these sentences could only lead to these sentences being aggravated, which is not possible legally according to the Convention. The Department also states that the transfer of IPP prisoners is currently subject to a legal challenge here and until this case is heard, the Department will not be processing any applications from IPP prisoners to conclusion.

What this means for you

The ICPO understands that there are 32 applications for repatriation currently 'on hold'. If you applied for repatriation before July 2016, you should have received a letter from the Irish Prison Service advising you of the current situation. If you applied for repatriation since July 2016, and if it has reached the Irish authorities, unfortunately it will not progress any further at the moment. However once applications begin to be processed again yours will be in the queue, but as there is a substantial backlog of cases, it may be some time before yours is processed to completion

If you are interested in being repatriated but haven't applied yet you are still entitled to do so. The country in which you are currently detained must agree to your transfer before the application is sent to the Irish authorities, which can take some time, so it may be worth starting the process now. In order to apply to transfer your sentence to Ireland, you must fulfil the following conditions:

1. You must be a citizen of Ireland. In some cases it will be enough if you are not a citizen but have permanent residency.
2. The sentence is final. You cannot apply for transfer before you face trial or until after all appeals have been heard.
3. There must be at least six months left to serve on the sentence.
4. The crime that you have been convicted of must also be a crime in Ireland.

However, in light of the above, it is important to remember that it may be several years before you are transferred if at all.

What you can do

The current situation is unacceptable for prisoners and their families and we are in touch with many of you who are deeply frustrated. The ICPO is working to get a resolution and we think you can play an important role in this too.

If you have applied for repatriation, you and/or your family may wish to consider contacting your local political representatives (your local TDs) in Ireland. Putting pressure on local politicians can help to bring about policy and legislative change. By contacting your local TDs you will help to raise awareness of the problem among Irish politicians and you will also be providing them with a very personal account of how this situation is affecting you and your family. If you have never done anything like this before or don't know where to start, don't worry - please get in touch with the ICPO in Maynooth. We can provide you with a sample letter and a list of your TDs (please remember to tell us where you are from or where your family are living). Some prisoners and their families may also wish to take legal advice on this matter

ICPO November 2017

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