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EUROPEAN COMMITTEE ON CRIME PROBLEMS

(CDPC)

**Committee of Experts on the Operation
of European Conventions in the Penal Field**

(PC-OC)

44rd meeting

Strasbourg, 25–27 February 2002

Reflections

*by the Italian representative
to the PC-OC, Mr Selvaggi*

Reflections by Mr Selvaggi, after yesterday discussion on point 5 of the agenda, namely n° 9ii of the Parliamentary Assembly Recommendation.

The starting point is the one which appears in para 51 of the Explanatory memorandum to Recommendation 1527(2001):

“given global trends towards an increase in foreign prison population, there are likely to be more and more of these prisoners in the future. The Council of Europe should seek to extend the reach of the transfer Convention to as many of these prisoners as possible”.

To that extend “the Council of Europe should identify like-minded States and actively encourage them to accede to the transfer Convention”(para 52).

In the explanatory memorandum it reads that “the transfer Convention does not carry the word “European” in its title. According to the explanatory Report, this reflects the draftsmen’s opinion that the instrument should be open also to like-minded democratic states outside Europe”.

The draft Recommendation was likewise formulated “like-minded states”).

The text approved by the Parliamentary Assembly recommends that the Committee of Ministers

“actively encourage those non-members States which have not yet done so, particularly those in which prison conditions are recognized as poor, to accede to the Convention”.

From the Report of the Bureau of the PC-OC meeting (doc. PC-OC (2001) 23) it reads (page 8) that *“the Committee follows the view that the Convention should not be opened to any non-member State, but only to like-minded States. Such States should be identified and encouraged to accede to the Convention; other States should not”.*

The main reason why we want more States, also non-members, to accede to the Convention is that we want our citizens who are detained in such countries, to come home to serve their sentence. To that extent it does not seem that the expression “like-minded states” is consistent with the goal we want to achieve, because the more not only the prison conditions are poor but also the sentencing states are not “like-minded”, the more is there a need for making it possible for sentenced persons to go to their countries, for humanitarian reasons and in order to cope with the goal (one of the goals) of the Convention, which is rehabilitation and reinsertion.

“Like-minded States” seems to be a label with nothing clear and specific behind it.

Actually, the issue we are now discussing can be looked at with two different perspectives: the first one is the perspective of the (future, administering State (we want our citizens back); the other one is the perspective from the side of the Member States as sentencing states. As to the latter aspect, the point that was made by the Austrian expert during yesterday’s meeting is absolutely correct: once we have the consent of the sentenced person who might desire to go to his/her country even if the prison conditions are worse than in the sentencing State, no problem should arise.

Nevertheless some problems might still remain, because there could be, at least in theory, the possibility to expose the sentenced person to a worse treatment that might have an impact which could be examined by the ECHR under article 3 (degrading and inhuman treatment).

As a conclusion:

Because it is up to the Council of Europe, through its competent bodies, to check the consistency of the legal system and of the prison conditions of non-member states, and because that is also a political issue which is exclusively under the competence of Council of Europe for evaluation, I think that it would be wise to delete the phrase “particularly those in which prison conditions are recognized as poor” which appears in 9ii.

And then there might be a note (either a footnote or an explanation) saying that the goal that should be achieved is to make the applicability of ETS 112 as large as possible, taking into account that the interest of present members states is to have the possibility to have their citizens coming back, in particular where the prison conditions in the sentencing states are poor and where is there a significant gap among member states and non-member states as far as fundamental principles (rights) or even culture are concerned.