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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)

48th meeting
Strasbourg, 1 – 3 March 2004

Item 10 of the Agenda: CETS 51 and the Transfer of sentenced persons

Comments submitted by Mr Eugenio Selvaggi (Italy)

This topic was initially raised by Sweden [see the note submitted by Mr Örjan Landelius at the 45th PC-OC meeting, doc. PC-OC (2002) 10].

Italy is also interested in discussing this matter, albeit under a different perspective. According to Italian law (Penitentiary Law), a sentenced person might be released under the supervision of the social services (in Italian: *affidamento in prova al servizio sociale*) when not more than three years of the sentence remain to be served. The relevant decision falls within the competence of the Court that supervises sentences (*Tribunale di Sorveglianza*). In Italy such a measure is considered to be an alternative way to serve a sentence as opposed to staying in prison; hence it is not a custodial sentence.

As a consequence, the request to serve such an alternative measure in another country does not seem to fall under the CETS 112 convention. In Italy we had and continue to have cases of detainees who might be eligible for such a measure, but cannot benefit from it because they are either foreign detainees or Italians who lived abroad before the sentence or who have families abroad. As a result, CETS 112 does not appear to be applicable, and neither does CETS 51, due to the modest number of signatures (23) and ratifications (17) to it.

On the other hand, it is almost impossible for detainees to be granted the above-mentioned benefit provided, because one of the conditions for such a benefit is that the person has family ties or work in the country and has a residence in which to live. Regarding the cases that I have mentioned above, these conditions are not present in the sentencing State, but do exist in the country of origin or in the country where the person lived before the sentence. As a consequence, foreigners are particularly discriminated against. I would not exclude that the problem lies within the Italian legislation, but I would appreciate an exchange of views on this point.

The questions that arise are the following:

1. Is CETS 112 applicable?
2. Is CETS 51 applicable?
3. Do member States have provisions that allow for an early release under the supervision of social services?
4. Have member States, who are party to the CETS 51 convention, applied it ?
5. Are there cases pending?
6. Taking into account the rising number of foreign detainees, do States think that the CETS 51 convention should be more extensively used?
7. What are the reasons why this convention is not extensively used?
8. What could be done in order to have a more extensive use of ETS 51?
9. Should prison authorities or consular authorities provide prisoners with more detailed information on ETS 51?
10. Should there be a way of inviting States to sign or to implement the convention?
11. Should the goal of reinsertion and rehabilitation of offenders be more widely pursued?

Statistically, in Italy, we had and continue to have some 7 (seven) cases settled or pending under CETS 51.

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