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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 13 of the Agenda: Practical difficulties

Note submitted by Mr Eugenio Selvaggi (Italy)

PC-OC Experts might wish to examine the following point concerning the CETS 112 Convention in relation to cases Italy had with Germany.

The point involves article 456a of the German criminal procedure code (Strafprozessordnung), which reads as follows: [Dispensing With Execution in the Case of Extradition or Expulsion]

(1) The executing authority may dispense with executing a prison sentence, default imprisonment or a measure of reform and prevention if the convicted person is to be extradited to a foreign government for another offense or if he is expelled from the territorial scope of this Federal statute.

(2) Execution may subsequently take place if the extradited or expelled person returns. Section 67c subsection (2) of the Penal Code shall apply *mutatis mutandis* to subsequent execution of a measure of reform and prevention. On dispensing with execution the executing authority may, at the same time, order subsequent execution in the event of the extradited or expelled person's return, and it may issue a warrant of arrest or a committal order for such purpose. The convicted person shall be so informed.

(unofficial translation).

... / ...

Italy was faced with two cases concerning the transfer of a prisoner who was sentenced under the German article 456a:

1) A person who had been sentenced in Germany made a request to be transferred to Italy, under the CETS 112 convention, in order to serve that sentence there. In this case two sentences had been delivered to the same person by two different German courts: the first one was 15 years' imprisonment issued by the Court in Düsseldorf and the second one was 10 months given by the Court in Hamburg. On July 2002, the person was transferred to Italy. His defence counsel has claimed that, because the German authorities have applied article 456a of the German code, neither of the sentences may be executed in Italy. We made some enquiries, although not completely exhaustive ones, with the German authorities. It appeared that only one of the two sentences (the one of Hamburg) fell under article 456a. According to Italian law, which implements CETS112, the Italian Court of Appeal recognised both German sentences (before article 456a had been applied). The questions are the following: because the person concerned was not extradited or deported, but transferred under the CETS 112 convention, does article 456a of the German code apply? Are both the German sentences enforceable in Italy or only the one to which article 456a has not been applied? In such cases should the sentencing State clearly state whether all or only some of the sentences are to be executed?

2) An Italian detainee who had been sentenced in Germany asked for a transfer to Italy under CETS112. The Court of Appeal in Rome recognised the foreign sentence. Due to a delay, for which the Italian authorities might be considered responsible, the German authorities then deported the person to Italy, and therefore suspended the execution of the sentence under article 456a. That person is now in Italy and the questions are the following: is the Italian sentence that recognised the German one enforceable in Italy? Can the German sentence, which now has become an Italian sentence, be executed in Italy? (It seems to me that there is no place for the execution of such a sentence.)

It goes without saying that, apart from the delay I have noted above, the German authorities, before issuing the deportation order, could have informed the Italian authorities. In any case, this should encourage all States Parties to the convention, to speed up procedures for the transfer of sentenced persons in order to avoid any inconvenience.