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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)

50th meeting
Strasbourg, 27 – 29 June 2005

**Additional Protocol of 18 December 1997 to the Convention on the Transfer of
Sentenced Persons (ETS No. 167)**

Memorandum by
Ms Astrid OFFNER
(Switzerland)
with regard to item 6.1 of the draft agenda

1. Objective of the Additional Protocol

Experience acquired over the years in the application of the Convention on the Transfer of Sentenced Persons (ETS No. 112) has shown that, in practice, there are situations which fall outside its scope but do require regulation. It was to fill these gaps that the Additional Protocol to the Convention on Transfer was adopted on 18 December 1997.

The Protocol makes provision for two cases in which the sentencing state and the state of which the sentenced person is a national may agree that a sentence will be executed in the sentenced person's country of origin without the need to obtain the person's consent:

- the person has fled to his or her country of origin to avoid the execution of the sentence in the sentencing state (Article 2);
- the person would have to leave the sentencing state in any case once he or she has served his or her sentence because the immigration authorities have ordered the expulsion or deportation of the person concerned (Article 3).

In both of these clearly defined cases, the Protocol lays down the rules for the transfer of the execution of sentences and departs from the rule that a convicted person must consent to a transfer.

2. The limited success of the Additional Protocol

The Additional Protocol provides the legal basis upon which contracting states can ensure that sentenced persons serve their prison sentences in their country of origin, even against their will. This is a pragmatic solution which helps to see to it that judicial decisions are enforced by establishing an effective international co-operation mechanism and makes for a reduction in the foreign prison population while remedying some problems with the execution of sentences. This means that, like the Convention itself, the Protocol satisfies one of the key aims of the execution of sentences, namely the social rehabilitation of criminals.

The success of any collaboration based on the Protocol depends first and foremost on the ratification and implementation of the instruments by the states parties to the Convention.

Since it was opened for signature, only 25 states have ratified the Protocol, whereas nearly 60 states are parties to the Convention. The collaboration established by the Protocol could be improved and transfers substantially increased if more states ratified the Protocol.

3. Proposal

To collect information on the experience of states which are parties to the Protocol and encourage others to ratify it, Switzerland proposes that a questionnaire be drawn up which could be sent out to all the members of the PC-OC and its observer states (see appendix).

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Draft

PC-OC questionnaire on the application of the Additional Protocol of 18 December 1997 to the Convention on the Transfer of Sentenced Persons (ETS No. 167)

1. What is the experience of your country as regards the application of the Additional Protocol?
2. Since the entry into force of the Additional Protocol, how many transfer procedures in your country have ended with the actual transfer of the sentenced person? To which countries were the persons concerned transferred?
3. What were the main reasons why transfers were not completed?
4. In your country, do persons who are to be transferred have means of appealing against transfer decisions?
5. What are the main types of problem which prevent the application of the Additional Protocol? What are the potential solutions?