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[PC-OC (2005) 21rev3 - Replies Questionnaire]

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Bilingual/Bilingue

**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**COMITE EUROPEEN DES PROBLEMES CRIMINELS**  
**(CDPC)**

**Committee of Experts on the Operation of European Conventions**  
**in the penal field**  
**Comité d'experts sur le fonctionnement des Conventions européennes**  
**en matière pénale**  
**(PC-OC)**

**Replies to the questionnaire**  
**on the Additional Protocol of 18 December 1997 to the**  
**Convention on the transfer of sentenced persons (ETS 167)**

**Réponses au questionnaire**  
**sur le Protocole Additionnel du 18 décembre 1997 à la**  
**Convention sur le transfèrement des personnes condamnées (STE 167)**

**Transfer of sentenced persons**

**Transfèrement des personnes condamnées**

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**Questionnaire by the PC-OC  
on the application of the Additional Protocol of 18 December 1997 to the Convention  
on the transfer of sentenced persons  
(ETS 167)**

**I- Introduction :**

The Additional Protocol establishes the legal basis on which states can ensure that sentenced foreigners serve their sentence in their country of origin even where the person concerned does not agree, although this possibility is limited to specific circumstances.

The success of co-operation based on the Protocol depends primarily on its ratification and implementation by the states parties to the Transfer Convention. However, since the opening of the Protocol to signature, only 25 States have ratified it, compared to 60 ratifications of the mother Convention.

In order to obtain information on the experience of States having ratified the Protocol, the present questionnaire has been drafted and is sent to the PC-OC's members and observers.

As agreed at the PC-OC's 50th meeting, **the replies to the questionnaire should reach the Secretariat by 15 October 2005.**

On the basis of the replies, the Secretariat will prepare, in consultation with the representative from Switzerland, the elements for a discussion on concrete suggestions which could be adopted by the PC-OC at its next meeting (March 2006) and submitted to the CDPC (April 2006).

**II- Questions :**

1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?
2. If not, does your country intend to ratify it in the near future?
3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.
4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

5. For what reasons have transfers been prevented?
6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?
7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

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**ALBANIA / ALBANIE**

**Questionnaire by the PC-OC  
on the application of the Additional Protocol of 18 December 1997 to the Convention  
on the transfer of sentenced persons  
(ETS 167)**

**I- Introduction :**

The Additional Protocol establishes the legal basis on which states can ensure that sentenced foreigners serve their sentence in their country of origin even where the person concerned does not agree, although this possibility is limited to specific circumstances.

The success of co-operation based on the Protocol depends primarily on its ratification and implementation by the states parties to the Transfer Convention. However, since the opening of the Protocol to signature, only 25 States have ratified it, compared to 60 ratifications of the mother Convention.

In order to obtain information on the experience of States having ratified the Protocol, the present questionnaire has been drafted and is sent to the PC-OC's members and observers.

As agreed at the PC-OC's 50th meeting, **the replies to the questionnaire should reach the Secretariat by 15 October 2005.**

On the basis of the replies, the Secretariat will prepare, in consultation with the representative from Switzerland, the elements for a discussion on concrete suggestions which could be adopted by the PC-OC at its next meeting (March 2006) and submitted to the CDPC (April 2006).

**II- Questions :**

8. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons? **No**
9. If not, does your country intend to ratify it in the near future? **Yes**
10. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements. **Albania has a bilateral agreement covered by the protocol with Italian Republic. We don't have specific statistics, because until now we have implemented mother convention on the transfer of the sentenced persons.**
11. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred? ----

12. For what reasons have transfers been prevented? -----

13. In your country, does a sentenced person have the possibility to appeal against a decision of transfer? [Yes, under the procedures foreseen in our CPC.](#)

14. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties? -----

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## AUSTRIA



**REPUBLIK ÖSTERREICH**  
**BUNDESMINISTERIUM FÜR JUSTIZ**

BMJ-F510.408/0007-IV 1/2005

Mr  
 Humbert de BIOLLEY  
 Division of Criminal Justice  
 Department of Crime Problems  
 DG I-Legal Affairs  
 Council of Europe

67065 Strasbourg  
 FRANCE

Museumstraße 7  
 1070 Wien

Briefanschrift  
 1016 Wien, Postfach 63

e-mail  
[kzl.f@bmj.gv.at](mailto:kzl.f@bmj.gv.at)

Telefon                      Telefax  
 +43 1 52152 0\*            +43 1 52152 2500

Sachbearbeiter(in)/Official in Charge  
 MMag. Barbara Göth-Flemmich

\*Durchwahl/Extension: 2505

Subject: Questionnaire PC-OC (2005) 15  
 on the Additional Protocol to the Convention  
 on the Transfer of Sentenced Persons (ETS 167)

September 8<sup>th</sup>, 2005

Dear Mr. BIOLLEY,

According to the decision taken at the 50<sup>th</sup> meeting of the PC-OC to discuss the experience of States having ratified the Additional Protocol to the Convention on the Transfer of Sentenced Persons on the basis of replies to a questionnaire, which should reach the Secretariat by 15 October 2005, Austria is pleased to forward the following information:

*1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?*

Yes, Austria has ratified the Additional Protocol in 2000.

*2. If not, does your country intend to ratify it in the near future?*

/

*3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.*

No.

*4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of sentenced persons? To which countries have the persons been transferred?*

Statistics are only available for 2005. In 2005 transfers on the basis of the Additional Protocol have only been effected in relation to two countries: Hungary and Romania. The huge majority of transfers is accomplished however with the consent of the person concerned on the basis of the Convention on the Transfer of Sentenced Persons or on the basis of bilateral treaties.

To Hungary in 2005 1 person has been transferred on the basis of the Additional Protocol (whereas 2 persons have been transferred to Hungary within this period on the basis of the Convention on the Transfer of Sentenced Persons).

To Romania in 2005 4 persons have been transferred on the basis of the Additional Protocol (whereas 15 persons have been transferred to Romania within this period on the basis of the Convention on the Transfer of Sentenced Persons).

*5. For what reasons have transfers been prevented?*

A regular exchange of information on prisoners fulfilling the conditions for transfer according to the Additional Protocol had to be established.

*6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?*

A person sentenced abroad may appeal against the decision of the Austrian court converting the sentence of the foreign State into a national decision.

The decision of the Austrian authorities to request the administering State to take the sentenced person into charge may not be appealed.

*7. What types of problems are to be considered as the main obstacle to the application of the Additional Protocol? What kind of proposed solutions could help to overcome these difficulties?*

See reply to 5.

The Additional Protocol is also dedicated to further social rehabilitation of sentenced persons. Where the person concerned opposes the transfer to the administering State indicating that social rehabilitation can better be maintained by serving the sentence in the sentencing State the information on existing social contacts in the sentencing State has to be verified. Expulsion or deportation orders often do not contain sufficient information on that point.

According to the Austrian experience however only a small percentage of sentenced persons (ca. 10 %) refer to existing social contacts in order to maintain social rehabilitation in the sentencing State. In most cases more comfortable prison conditions are mentioned or no reasons at all for opposing the transfer are put forward.

Yours sincerely



## AZERBAIJAN

### **Questionnaire by the PC-OC on the application of the Additional Protocol of 18 December 1997 to the Convention on the transfer of sentenced persons (ETS 167)**

#### **I- Introduction :**

The Additional Protocol establishes the legal basis on which states can ensure that sentenced foreigners serve their sentence in their country of origin even where the person concerned does not agree, although this possibility is limited to specific circumstances.

The success of co-operation based on the Protocol depends primarily on its ratification and implementation by the states parties to the Transfer Convention. However, since the opening of the Protocol to signature, only 25 States have ratified it, compared to 60 ratifications of the mother Convention.

In order to obtain information on the experience of States having ratified the Protocol, the present questionnaire has been drafted and is sent to the PC-OC's members and observers.

As agreed at the PC-OC's 50th meeting, **the replies to the questionnaire should reach the Secretariat by 15 October 2005.**

On the basis of the replies, the Secretariat will prepare, in consultation with the representative from Switzerland, the elements for a discussion on concrete suggestions which could be adopted by the PC-OC at its next meeting (March 2006) and submitted to the CDPC (April 2006).

#### **II- Questions :**

1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

**The Republic of Azerbaijan has not ratified yet the Additional Protocol to the Convention on the transfer of sentenced persons**

2. If not, does your country intend to ratify it in the near future?

**Azerbaijan has not signed yet this Protocol, so it seems that it won't be ratified in the near future.**

3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

**Azerbaijan transfers persons in circumstances covered by the Protocol on another basis than the Protocol such as bilateral agreements. Such agreements have been concluded with Russian Federation, Georgia, Ukraine, Lithuania (and with some non-European countries such as Kazakhstan, Uzbekistan, Islamic Republic of Iran). In 2005, up to 1 October, 30 sentenced persons were transferred to Russian Federation and Ukraine on the basis of bilateral agreements.**

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

**The Republic of Azerbaijan has not ratified yet the Additional Protocol to the Convention on the transfer of sentenced persons. But as above mentioned, in 2005, up to 1 October, 30 sentenced persons were transferred to Russian Federation and Ukraine on the basis of bilateral agreements**

5. For what reasons have transfers been prevented?

**Reasons for prevention have mainly been non double criminality, disagreement of the sentenced person etc.**

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

***In our country a sentenced person is entitled to appeal against a decision of transfer.***

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

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**BELGIQUE**

**Questionnaire du PC-OC**  
**relatif à l'application du Protocole additionnel du 18 décembre 1997 à la Convention**  
**sur le transfèrement des personnes condamnées (STE N° 167)**

**I- Introduction :**

Le Protocole additionnel constitue la base légale qui permet aux Etats contractants d'obtenir que des personnes étrangères condamnées purgent une peine privative de liberté dans leur pays d'origine, et ce même, dans deux cas spécifiques, contre leur gré.

Le succès d'une collaboration fondée sur le Protocole dépend, en premier lieu, de la ratification et de la mise en pratique de l'instrument par les Etats parties à la Convention sur le transfèrement. Or, depuis l'ouverture à la signature du Protocole, le nombre de ratifications ne s'élève qu'à 25 Etats, alors que près de 60 Etats ont adhéré à la Convention sur le transfèrement.

En vue d'obtenir des informations sur les expériences faites par les Etats qui sont parties au Protocole le questionnaire ci-dessous a été élaboré en vue d'être adressé à tous les membres du PC-OC ainsi qu'aux Etats observateurs du Comité.

Comme convenu lors de la 50<sup>ème</sup> réunion du PC-OC, **les réponses au questionnaire devraient parvenir au Secrétariat avant le 15 octobre 2005.**

Des éléments seront préparés sur base des réponses en vue d'une discussion à ce sujet, lors de la 51<sup>ème</sup> réunion du PC-OC (mars 2006). Le PC-OC devrait proposer des suites concrètes au CDPC pour sa prochaine session plénière (avril 2006).

**II- Questions :**

1. *Votre pays a-t-il ratifié le Protocole additionnel à la Convention sur le transfèrement des personnes condamnées ?*

La Belgique a ratifié le Protocole additionnel à la Convention sur le transfèrement des personnes condamnées en date du 26 mai 2005. Le Protocole est entré en vigueur le 1<sup>er</sup> septembre 2005.

2. *Si votre pays ne l'a pas fait, compte-t-il ratifier le Protocole prochainement ?*

Non applicable vu la réponse faite à la question 1.

3. *Votre pays opère-t-il des transfèvements couverts par le Protocole sur une autre base, telle des accords bilatéraux ? Si oui, avec quels pays ces accords ont-ils été conclus ? Veuillez donner des statistiques de mise en œuvre de ces accords bilatéraux.*

Un accord bilatéral en matière de transfèrement des personnes condamnées a été conclu entre la Belgique et le Maroc. Depuis le 1<sup>er</sup> janvier 2004, aucune demande de transfèrement n'a été introduite (dans les 2 sens).

4. *Si votre pays a ratifié le Protocole additionnel, combien de procédures de transfèrement se sont terminées dans votre pays par le transfèrement de la personne condamnée? Dans quels pays les personnes concernées ont-elles été transférées?*

Le Protocole additionnel ayant été ratifié très récemment, les procédures qui l'appliquent ne sont pas encore terminées. A titre d'exemple, voici un tableau de statistiques des procédures de transfèrement s'étant soldées par le transfèrement effectif de la personne condamnée, avant l'entrée en vigueur du Protocole additionnel.

	<b>2003</b>	<b>2004</b>
<b>1. UK</b>	14	1
<b>Espagne</b>	3	2
<b>Portugal</b>	-	3
<b>Italie</b>	-	2
<b>Suède</b>	2	-
<b>Norvège</b>	2	1
<b>Danemark</b>	1	-
<b>Etats-Unis</b>	1	6
<b>Grèce</b>	-	1
<b>Maroc</b>	1	-
<b>Costa Rica</b>	1	-
<b>Panama</b>	-	1
<b>TOTAL</b>	24	17

5. *Quels ont été les motifs les plus fréquents ayant empêché un transfèrement?*
- i. l'éloignement de la Belgique depuis un très long moment qui laisserait supposer qu'il n'y a plus de liens familiaux et sociaux en Belgique
  - ii. la recherche d'un bénéfice substantiel dans la réduction de peine
  - iii. l'absence de volonté de réinsertion sociale
6. *Dans votre pays, la personne qui doit être transférée dispose-t-elle d'une voie de recours pour s'opposer à la décision de transfèrement?*

Il n'existe qu'un recours informel auprès l'administration (SPF Justice) dans le cas où le transfèrement est refusé par l'administration. Le dossier peut toujours être "reconsidéré".

7. *Quels sont les types de problèmes qui constituent l'obstacle majeur à l'application du Protocole additionnel? Quelles sont les propositions de solutions qui devraient être mises en oeuvre?*

Il est encore trop tôt pour identifier les problèmes qui se posent en appliquant le Protocole Additionnel. La Belgique n'a pas encore de dossiers ouverts en vertu du Protocole.

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**BOSNIA AND HERZEGOVINA**

**Questionnaire by the PC-OC  
on the application of the Additional Protocol of 18 December 1997 to the Convention  
on the transfer of sentenced persons  
(ETS 167)**

*Referring to your Questionnaire the Ministry of justice of Bosnia and Herzegovina have an honour to provide you with the following answers:*

**1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?**

No, it hasn't.

**2. If not, does your country intend to ratify it in the near future?**

No, it doesn't in the near future.

**3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.**

No , it doesn't.

**4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?**

-

**5. For what reasons have transfers been prevented?**

-

**6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?**

In accordance with the Criminal Procedure Code of BiH the sentenced person has the possibility to appeal against a decision.

**7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?**

In BiH the main problem is the lack of financial resources for the execution of the transfer.

**BULGARIA**

**Questionnaire  
on the application of the Additional Protocol of 18 December 1997 to the  
Convention on the transfer of sentenced persons  
(ETS 167)**

**1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?**

Republic of Bulgaria ratified the Additional Protocol to the Convention on the transfer of sentenced persons on 28<sup>th</sup> January 2004 and it is entered into force on 01<sup>st</sup> July 2004.

**2. If not, does your country intend to ratify it in the near future?**

**3 Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.**

To this moment there are not such cases. It is imminent to be concluded with the Italian Republic Agreement on the transfer of sentenced persons in the cases, when in respect of them is enacted also expulsion.

**4 If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?**

The competent bodies in our country to this moment have been not availed of an opportunity which the Protocol gives them and there are not filed requests to other countries on the transfer of persons on the ground of this legal act.

**5. For what reasons have transfers been prevented?**

**6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?**

After the sentenced person arrived in the Republic of Bulgaria or it shall be ascertained that she/he is on its territory, the general prosecutor sends the sentence, accepted for execution and the enclosed to the sentence documents to the Sofia City Court with a proposal for allowing of the issues related to its execution.

The court pronounces under the proposal with a decision in the judicial session with the participation of a prosecutor and of the sentenced person. The decision of the court may be appealed in front of the Sofia Court of Appeal.

**7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?**

As the Additional Protocol to the Convention on the transfer of sentenced persons acts for the Republic of Bulgaria from about one year and in view of rather little cases which we have, we still may not outline a circle of problems which arise upon the application of this Protocol.

We may say that there is some mixing by the law-enforcing bodies between request under the Additional Protocol to the Convention on the transfer of sentenced persons and request for recognition of a sentence.

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**CROATIA / CROATIE**

**Questionnaire by the PC-OC  
on the application of the Additional Protocol of 18 December 1997 to the  
Convention on the transfer of sentenced persons  
(ETS 167)**

**Questions & Answers :**

15. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

**No.**

16. If not, does your country intend to ratify it in the near future?

**Ratification of the Additional Protocol to the Convention on the transfer of sentenced persons is not scheduled for next year – 2006.**

17. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

**Croatia has made bilateral agreements with countries as follows:**

- |                  |                          |            |
|------------------|--------------------------|------------|
| - Austria        | - Bosnia and Hercegovina | - Denmark  |
| - Czech Republic | - Macedonia              | - Slovakia |
| - Slovenia       | - Turkey                 |            |

**The statistics on the implementation of above mentioned agreements are not obtainable due to the huge number of cases in the Sector for mutual legal assistance and lacking of the computer kept record of the cases.**

18. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?



19. For what reasons have transfers been prevented?





20. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

In process of transfer a sentenced person to Croatia, Croatia applies provision of the Article 11 of the Convention on the transfer a sentenced, as a rule. This process is held before courts and according Croatian national penal law the appeal against the decision of the court of first instance is allowed.

In process of transfer a sentenced person from Croatia, consent to the relocation of the sentenced person is given by the Minister of Justice of the Republic of Croatia, with prior opinion of the State Attorney's Office.

For the transfer of the sentenced person (from Croatia), consent of convicted person to be relocated, is required, without it there would be no transfer. Since this procedure is instigated with approval and consent of sentenced person, it is hard to see what would be grounds for appeal in the transfer proceedings if the transfer is granted,

Consent of the Minister of Justice for the relocation of convicted person is his/her prerogative as a government's official, head of the ministry. It is not clear in what sense the question of appeal against the decision is raised.

21. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?



**CZECH REPUBLIC**

**Questionnaire**  
**On the Additional Protocol to the Convention**  
**on the transfer of sentenced persons**  
**(ETS 167)**

**Reply from the Czech Republic**

1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

*The Czech Republic ratified ETS 167 on 1 February 2003.*

2. If not, does your country intend to ratify it in the near future?

*See reply to Question 1.*

3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

*The Czech Republic is able to transfer sentenced persons in circumstances stated in the Article 2 of ETS 167 on the basis of the Articles 67 – 69 of the Convention of 19 June 1990 Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders (Schengen Implementing Treaty, SIT).*

*The Articles 67 – 69 SIT supplement the Council of Europe Convention on Transfer of Sentenced Persons of 21 March 1983 (ETS 112) in the relations between the EU Member States (with exception of Ireland), Norway and Iceland. Despite the fact that the Czech Republic is not a signatory of SIT, its provisions are binding on its territory as “schengen acquis” (i.e. rules of the EU). Articles 67 – 69 SIT are in the Czech Republic applicable from 1 May 2004, the date of its entry to the EU.*

*Czech Republic is also Party of the Convention on the Transfer of Persons Sentenced to Imprisonment for the Execution of the Sentence in the State of their Nationality (Berlin, 19 May 1978) which allows to transfer convicts without their consent in any circumstances. The Convention is at present time binding for Bulgaria, the Czech Republic, Cuba, Hungary, Mongolia, Poland, North Korea and for the former states of the USSR which succeeded to the Convention.*

*However, the Czech Republic applies the Convention currently only in relations with the former USSR states and exclusively in the situation where the sentenced person agrees to the transfer.*

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

*Precise statistical data are not available. The execution of the sentence and/or the sentenced persons have been transferred to Estonia, Lithuania and Ukraine.*

5. For what reasons have transfers been prevented?

*The Czech Republic has not rejected any request pursuant to ETS 167 yet. However, potential reasons for refusal are identical with reasons for rejection of the request pursuant the mother Convention ETS 112 (e.g. significantly different conditions of early release in the Sentencing and Administering State).*

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

*There is no appeal against decision of transfer in the legal order of the Czech Republic.*

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

*The Czech Republic has no problems with the application of ETS 167.*

**DENMARK****DENMARK'S ANSWERS TO THE COUNCIL OF EUROPE QUESTIONNAIRE ON THE APPLICATION OF THE ADDITIONAL PROTOCOL OF 18 DECEMBER 1997 TO THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS (ETS 167)****Question 1:**

Denmark ratified the additional protocol (ETS 167) on 10 September 2001. ETS 167 entered into force on 1 January 2002.

**Question 2:**

Not applicable.

**Question 3:**

Denmark does not transfer persons in circumstances covered by the Protocol on another basis than the Protocol and thus question 3 must be answered in the negative.

**Question 4:**

As regards question 4 on the number of transfer procedures initiated having lead to the transfer of a sentenced person our records show that very few transfer procedures have been initiated, among others to Lithuania.

**Question 5:**

In response to question 5 it can be informed that transfers are denied under Danish law in the circumstances enumerated in the additional protocol of 18 December 1997 to the convention on the transfer of sentenced persons.

**Question 6:****6.1. Transfer of the enforcement of a sentence imposed in Denmark****6.1.1. Persons having fled from the sentencing State**

The Ministry of Justice decides upon request from the Prison and Probation Service or the local chiefs of police whether there is any basis for making a request to the sentenced person's country of origin for transfer of the execution of the sentence and – in relevant cases – for any provisional measures pursuant to Article 2 (2) of the Additional Protocol. The decision of the Ministry of Justice cannot be appealed.

**6.1.2. Sentenced persons subject to an expulsion or deportation order**

The Ministry of Justice decides upon request from the Prison and Probation Service or the local chiefs of police whether there is any basis for contacting the administering State with

the intention of transferring the sentenced person for execution of the sentence in that State. The decision of the Ministry of Justice cannot be appealed.

## **6.2. Transfer of the enforcement of a sentence imposed abroad**

### **6.2.1. Persons having evaded the enforcement of a sentence**

The Ministry of Justice decides whether Denmark should consent to taking over the execution of the sentence imposed. The decision of the Ministry of Justice cannot be appealed. If the sentencing State subsequently accepts transfer of the execution of the sentence, the Danish Ministry of Justice will request the local chief of police to submit the case to the District Court. The District Court decision may be appealed to the High Court. The local chief of police will see to it that a copy of the final and conclusive judgment is forwarded to the Ministry of Justice for reforwarding to the sentencing State.

### **6.2.2. Persons subject to an expulsion or deportation order**

The Ministry of Justice decides whether Denmark should consent to taking over the enforcement of the sentence imposed. The decision of the Ministry of Justice cannot be appealed. If the sentencing State subsequently accepts the transfer, the Ministry of Justice will request the local chief of police to submit the case to the District Court when the person in question has been transferred to Denmark. The decision of the District Court may be appealed to the High Court. The local chief of police will see to it that a copy of the final and conclusive judgment is forwarded to the Ministry of Justice for reforwarding to the original sentencing State.

### **Question 7:**

No specific obstacles to the application of the additional Protocol have been identified.

**ESTONIA**

**Questionnaire by the PC-OC  
on the application of the Additional Protocol of 18 December 1997 to the  
Convention on the transfer of sentenced persons  
(ETS 167)**

**I- Introduction :**

The Additional Protocol establishes the legal basis on which states can ensure that sentenced foreigners serve their sentence in their country of origin even where the person concerned does not agree, although this possibility is limited to specific circumstances.

The success of co-operation based on the Protocol depends primarily on its ratification and implementation by the states parties to the Transfer Convention. However, since the opening of the Protocol to signature, only 25 States have ratified it, compared to 60 ratifications of the mother Convention.

In order to obtain information on the experience of States having ratified the Protocol, the present questionnaire has been drafted and is sent to the PC-OC's members and observers.

As agreed at the PC-OC's 50th meeting, **the replies to the questionnaire should reach the Secretariat by 15 October 2005.**

On the basis of the replies, the Secretariat will prepare, in consultation with the representative from Switzerland, the elements for a discussion on concrete suggestions which could be adopted by the PC-OC at its next meeting (March 2006) and submitted to the CDPC (April 2006).

**II- Questions :**

1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

*Estonia was the second country ratified the Additional Protocol to the Convention on the Transfer of Sentenced Persons in June 1999.*

2. If not, does your country intend to ratify it in the near future?

3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

*No.*

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

*In most cases Estonia is the "administering state"; as sentencing state Estonia has been dealt with 5 transfer cases only in 2005 (one to Finland and 4 to Latvia). As administering state we have transferred to Estonia (mainly from Sweden and Finland) during last two years 30-40 prisoners.*

5. For what reasons have transfers been prevented?

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

*Yes. The decision of transfer (Consent) can be appealed to Administrative Court. During last 2 years there have been 6 appeal cases in Tallinn Administrative Court, all of them with "positive" solution for State.*

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

*Two main problems:*

- *Legislative differences on the possibility to be released on parol (in some countries after serving 1/2; in some countries 2/3).*
- *Prison conditions in general (where these are better, where not).*

**FINLAND****QUESTIONNAIRE BY THE PC-OC ON THE APPLICATION OF THE ADDITIONAL  
PROTOCOL OF 18 DECEMBRE 1997 TO THE  
CONVENTION ON THE TRANSFER OF SENTENCED PERSONS**

1. Yes

2.

3. No

4. Out of a total of 37 convicted persons singled out for transfer by the Prison Administration only 10 persons have been transferred, all of them to Estonia.

5. Mainly because our internal procedures are rather cumbersome and time consuming which tend to lead to the prisoners' being released on parole (and being immediately deported) before transfer can take place.

The statistics are somewhat affected by the fact that the transfer proceedings were suspended for a longish period of time in anticipation of a ruling by the European Court of Human Rights which caused the proceedings to fall through in many cases.

6. Yes

7. The Additional Protocol itself rests on sound principles; in certain circumstances it has to be possible to transfer a person even without his/her consent. Whatever obstacles there are, are invariably of domestic origin and have to be dealt with on a national level.



**GERMANY**

Responses of the German delegation to the questionnaire PC-OC (2005)15:  
Additional Protocol to the Convention on the transfer of sentenced persons (ETS 167)

1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

No.

2. If not, does your country intend to ratify it in the near future?

Yes.

The Federal Government has already submitted to Parliament the draft legislation necessary for ratification. However, resubmission is necessary due to the new parliamentary elections on 18 September 2005.

3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

In terms of the relations among Schengen Member States, cases of escape are treated pursuant to Articles 68 and 69 of the Schengen Convention. Such cases of escape would also be covered under the Brussels Convention on the Enforcement of Foreign Criminal Penalties of 13 November 1991; however, this Convention has not taken effect, and is only provisionally applicable between individual Member States.

No other multilateral or bilateral agreements exist.

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

N/A.

5. For what reasons have transfers been prevented?

N/A.

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

No. Only the *exequatur* decision of the German court, which is competent to decide with regard to the height of the sanctions to be enforced, is subject to appeal. The person convicted may not appeal the associated decision granting transfer.

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

It is not possible to provide information on this question, because the Additional Protocol has not yet been ratified. However, the Federal Government does not expect any serious problems in the application of the Additional Protocol.

**HONGRIE**

**Questionnaire du PC-OC**  
**relatif à l'application du Protocole additionnel du 18 décembre 1997 à la Convention**  
**sur le transfèrement des personnes condamnées (STE N° 167)**

**I- Introduction :**

Le Protocole additionnel constitue la base légale qui permet aux Etats contractants d'obtenir que des personnes étrangères condamnées purgent une peine privative de liberté dans leur pays d'origine, et ce même, dans deux cas spécifiques, contre leur gré.

Le succès d'une collaboration fondée sur le Protocole dépend, en premier lieu, de la ratification et de la mise en pratique de l'instrument par les Etats parties à la Convention sur le transfèrement. Or, depuis l'ouverture à la signature du Protocole, le nombre de ratifications ne s'élève qu'à 25 Etats, alors que près de 60 Etats ont adhéré à la Convention sur le transfèrement.

En vue d'obtenir des informations sur les expériences faites par les Etats qui sont parties au Protocole le questionnaire ci-dessous a été élaboré en vue d'être adressé à tous les membres du PC-OC ainsi qu'aux Etats observateurs du Comité.

Comme convenu lors de la 50<sup>ème</sup> réunion du PC-OC, **les réponses au questionnaire devraient parvenir au Secrétariat avant le 15 octobre 2005.**

Des éléments seront préparés sur base des réponses en vue d'une discussion à ce sujet, lors de la 51<sup>ème</sup> réunion du PC-OC (mars 2006). Le PC-OC devrait proposer des suites concrètes au CDPC pour sa prochaine session plénière (avril 2006).

**II- Questions :**

2) Votre pays a-t-il ratifié le Protocole additionnel à la Convention sur le transfèrement des personnes condamnées ? **OUI**

3) Si votre pays ne l'a pas fait, compte-t-il ratifier le Protocole prochainement ?

4) Votre pays opère-t-il des transfèremens couverts par le Protocole sur une autre base, telle des accords bilatéraux ? **NON**

Si oui, avec quels pays ces accords ont-ils été conclus ? Veuillez donner des statistiques de mise en œuvre de ces accords bilatéraux.

5) Si votre pays a ratifié le Protocole additionnel, combien de procédures de transfèrement se sont terminées dans votre pays par le transfèrement de la personne condamnée? Dans quels pays les personnes concernées ont-elles été transférées?

**Il n'y a pas de statistique de telle information.**

5. Quels ont été les motifs les plus fréquents ayant empêché un transfèrement? **Le temps à servir est trop court et la procédure devant la cour à l'étranger dure trop long.**
6. Dans votre pays, la personne qui doit être transférée dispose-t-elle d'une voie de recours pour s'opposer à la décision de transfèrement? **Non (la décision est prise par le Ministre de la Justice.)**
7. Quels sont les types de problèmes qui constituent l'obstacle majeur à l'application du Protocole additionnel? **Il n'en a aucun.**

Quelles sont les propositions de solutions qui devraient être mises en oeuvre?

LATVIA

/emblem/

PROSECUTOR GENERAL'S OFFICE  
OF THE REPUBLIC OF LATVIA  
ANALYSIS AND MANAGEMENT DEPARTMENT

Reg.No. 9000022859., 6 Kalpaka Blvd., Riga, LV-1801  
Phone 7044448, Fax 7044449, e-mail: darbdep@lrp.gov.lv

RIGA

October 5, 2005  
No.1/1-9-217-05

Council of Europe  
European Committee on Crime  
Problems (CDCP)  
Committee of Experts on the  
Operation of European Conventions  
in the Penal Field (PC-OC)

Questionnaire on the Application of the  
Additional Protocol of December 18, 1997  
to the Convention on the Transfer of Sentenced Persons (ETS 167)

General Prosecutor's Office of the Republic of Latvia has received and considered the  
Questionnaire of Additional Protocol to the Convention on the Transfer of Sentenced  
Persons prepared by You and renders the following replies:

- 1.The Republic of Latvia has ratified the Additional Protocol to the Convention on the  
Transfer of Sentenced Persons.
- 2.-
- 3.The Republic of Latvia had not signed such bilateral agreements.
- 4.None of them.
5. Additional Protocol of December 18, 1997 to the Convention on the Transfer of  
Sentenced Persons is valid in Latvia just from October 1, 2005.
- 6.It isn't specially defined by the Criminal Process Act of the Republic of Latvia that the  
decision isn't reversible.
- 7.-

Regards,

A.Zakis  
International Collaboration Division Senior Prosecutor,  
General Prosecutor's Office of the Republic of Latvia

Translator: Bruno Treimanis



## LIECHTENSTEIN

### Questionnaire by the PC-OC on the application of the Additional Protocol of 18 December 1997 to the Convention on the transfer of sentenced persons (ETS 167)

#### I- Introduction :

The Additional Protocol establishes the legal basis on which states can ensure that sentenced foreigners serve their sentence in their country of origin even where the person concerned does not agree, although this possibility is limited to specific circumstances.

The success of co-operation based on the Protocol depends primarily on its ratification and implementation by the states parties to the Transfer Convention. However, since the opening of the Protocol to signature, only 25 States have ratified it, compared to 60 ratifications of the mother Convention.

In order to obtain information on the experience of States having ratified the Protocol, the present questionnaire has been drafted and is sent to the PC-OC's members and observers.

As agreed at the PC-OC's 50th meeting, **the replies to the questionnaire should reach the Secretariat by 15 October 2005.**

On the basis of the replies, the Secretariat will prepare, in consultation with the representative from Switzerland, the elements for a discussion on concrete suggestions which could be adopted by the PC-OC at its next meeting (March 2006) and submitted to the CDPC (April 2006).

#### II- Questions *and replies*

22. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

*Ad 1. Yes.*

23. If not, does your country intend to ratify it in the near future?

*Ad 2. ---*

24. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

*Ad 3. No. (Nevertheless please note that there is a bilateral treaty between Liechtenstein and Austria about committal of prisoners in Austria (Legal Gazette 1983 No. 39). In Fact*

*Liechtenstein's long term prisoners are placed in Austrian prisons, but they are still Liechtenstein's prisoners.)*

25. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

*Ad 4. This Additional Protocol is in force in Liechtenstein since September 1<sup>st</sup>, 2003. Up to now there is no practice in dealing the protocol because of a lack of cases.*

26. For what reasons have transfers been prevented?

*Ad 5. ---*

27. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

*Ad 6. In practice the sentenced person has to agree to the transfer according to Art. 1 Para 1 lit. a of the Convention. But if in cases of Art. 2 Para 3 of the Protocol the person does not agree, he has the possibility to make an appeal against this court decision according to the Criminal Procedure Code.*

28. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

*Ad 7. Liechtenstein's authorities have no experience in these cases.*

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**LITHUANIA**

**Questionnaire by the PC-OC  
on the application of the Additional Protocol of 18 December 1997 to the Convention  
on the transfer of sentenced persons  
(ETS 167)**

**I- Introduction :**

The Additional Protocol establishes the legal basis on which states can ensure that sentenced foreigners serve their sentence in their country of origin even where the person concerned does not agree, although this possibility is limited to specific circumstances.

The success of co-operation based on the Protocol depends primarily on its ratification and implementation by the states parties to the Transfer Convention. However, since the opening of the Protocol to signature, only 25 States have ratified it, compared to 60 ratifications of the mother Convention.

In order to obtain information on the experience of States having ratified the Protocol, the present questionnaire has been drafted and is sent to the PC-OC's members and observers.

As agreed at the PC-OC's 50th meeting, **the replies to the questionnaire should reach the Secretariat by 15 October 2005.**

On the basis of the replies, the Secretariat will prepare, in consultation with the representative from Switzerland, the elements for a discussion on concrete suggestions which could be adopted by the PC-OC at its next meeting (March 2006) and submitted to the CDPC (April 2006).

**II- Questions :**

1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

**-The Republic of Lithuania ratified the Additional Protocol to the Convention on the transfer of sentenced persons on 31 January 2001 (In force from 1 May 2001).**

2. If not, does your country intend to ratify it in the near future?

3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

**-No.**

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

**-The Republic of Lithuania has not initiated any transfer of a sentenced person from Lithuania without his consent.**

5. For what reasons have transfers been prevented?

**-There was one case when the Ministry of Justice of the Republic of Lithuania did not give its consent for transfer of a sentenced person from another country to Lithuania applying the Additional Protocol. The competent authorities (Prosecutor General's Office of the Republic of Lithuania, Prison Department under the Ministry of Justice of the Republic of Lithuania, Ministry of Justice of the Republic of Lithuania) considered that it would be safer for that sentenced person to stay in the country he was sentenced in for serving custodial sentence due to possible threat to his health and life in a penal institution of Lithuania (father of that sentenced person co-operated with prosecutors during pre-trial investigation of several criminal cases on crimes in which the father of the sentenced person participated with accomplices).**

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

**-The Ministry of Justice of the Republic of Lithuania shall take a decision to transfer a sentenced person applying the Additional Protocol. The sentenced person regarding whom the decision on transfer was taken has a right to make a complaint against it as a decision of entity of central administration to Vilnius County Administrative Court (Point 1 Para 1 Article 15 and Para 1 of Article 19 of the Law on Administrative Proceedings of the Republic of Lithuania). The court may reject the complaint or comply with the complaint and revoke the decision of the Ministry of Justice (Article 88 of the Law on Administrative Proceedings of the Republic of Lithuania).**

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

**-There are no obstacles for application of the Additional Protocol seeking to transfer a sentenced persons from or to Lithuania.**

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**MOLDOVA****European Committee on Criminal Matters (CDPC)****Committee of experts regarding the functioning of the  
European Conventions in criminal matters  
(PC-OC)****Questionnaire regarding the Additional Protocol to Convention on transfer of convicted persons (STE 167)****Answers to the issues included in Questionnaire PC-OC regarding the appliance of Additional Protocol from 18 December 1997 to the Convention on the transfer of sentenced persons (STE 167)**

1. Yes, Republic of Moldova has ratified the Additional Protocol to the Convention on transfer of sentenced persons, by the Law nr. 70-XV from 11 March 2004, in force for our State since the 1<sup>st</sup> of September 2004.

2.-----

3. With reference to the bilateral agreements, we are eager to inform you that our State has no agreement signed with any other state in this respect. Presently, all the transfers are carried out on the basis of Treaties on International Mutual legal assistance, which provide the transfer procedure, as well as pursuant to the above mentioned Convention. Exception constitutes the Treaty on International Legal Assistance signed with Russian Federation, which does not provide any regulations concerning the transfer procedure.

4. By the Republic of Moldova has been undertaken, according to the aforesaid Convention, three transferences from the following States: Poland, Austria and Spain.

5 The most often impediments occurred in practice of transfer of the sentenced persons are the following:

- The state that request the transfer is not party to the Convention on transfer of the sentenced persons,
- the solicitant state does not signed with our state any Treaty on international legal assistance.
- the sentenced person is incapable to cover the caused material damages.

6. In case when a person shall be transferred from other state in order to continue serving their sentence on the Republic of Moldova territory, the necessary documents are submitted to the court of law that delivers a decision on the acceptance or refusal of transfer of the person who follows to be transferred. Respectively, against this decision may be lodged an appeal within a reasonable time, provided by the law. When it is dealt with the transference of a person from Republic of Moldova to another state, than the Ministry of Justice is in charge of taking such decisions. Respectively, a way of appeal is the administrative jurisdictions.

7. In regard to the appliance of the Additional Protocol to the Convention on the transfer of sentenced persons, we have to inform you that there are no problems in this connection.

**MONACO****PRINCIPAUTE DE MONACO****COMITE EUROPEEN DES PROBLEMES CRIMINELS**  
(CDPC)**Comité d'experts sur le fonctionnement des**  
**Conventions européennes en matière pénale**  
(PC-OC)**Réponses au questionnaire**  
**Sur le Protocole Additionnel à la Convention**  
**sur le transfèrement des personnes condamnées (STE 167)**

- 1. Votre pays a-t-il ratifié le Protocole additionnel à la Convention sur le transfèrement des personnes condamnées ?**

*La Principauté de Monaco, n'étant pas encore partie à la Convention sur le transfèrement des personnes condamnées, n'est pas partie à son Protocole additionnel.*

- 2. Si votre pays ne l'a pas fait, compte-t-il ratifier le Protocole prochainement ?**

*Il n'est pas prévu dans un proche avenir de ratifier ni la Convention ni son Protocole.*

- 3. Votre pays opère-t-il des transfèremments couverts par le Protocole sur une autre base, telle des accords bilatéraux ? Si oui, avec quels pays ces accords ont-ils été conclus ? Veuillez donner des statistiques de mise en œuvre de ces accords bilatéraux.**

*La Principauté de Monaco ne procède pas aux transfèremments tels que prévus par le protocole additionnel. Les accords bilatéraux qu'elle a signés ne prévoient pas de tels tranfèremments.*

- 4. Si votre pays a ratifié le Protocole additionnel, combien de procédures de transfèrement se sont terminées dans votre pays par le transfèrement de la personne condamnée? Dans quels pays les personnes concernées ont-elles été transférées?**

*Sans objet.*

- 5. Quels ont été les motifs les plus fréquents ayant empêché un transfèrement?**

*Sans objet.*

- 6) Dans votre pays, la personne qui doit être transférée dispose-t-elle d'une voie de recours pour s'opposer à la décision de transfèrement?**

*Sans objet*

**7) *Quels sont les types de problèmes qui constituent l'obstacle majeur à l'application du Protocole additionnel? Quelles sont les propositions de solutions qui devraient être mises en oeuvre?***

Compte tenu de son exigüité, la Principauté de Monaco ne peut faire exécuter des peines à des détenus condamnés à l'étranger. En revanche, la Principauté a conclu de nombreux traités d'extradition qui sont appliqués de manière efficace et sur la base desquels, elle assure une coopération satisfaisante, à ce niveau, avec d'autres Etats.

**NETHERLANDS**

Ministry of Justice

**Directorate-General for International Affairs and Immigration**

Postal address: Postbus 20301, 2500 EH Den Haag

PC-OC

**Humbert de Biolley**

Division of Criminal Justice

Departement of Crime Problems

DG I-Legal Affairs

Council of Europe

67065 Strasbourg

FRANKRIJK

Address for visitors

Schedeldoekshaven 100

2511 EX Den Haag

Telephone

+31 (0)70 3 70 79 11

Fax

+31 (0)70 3 70 79 45

www.justitie.nl

Department	Office of International Legal Assistance in Criminal Matters
Contact	L.T. Bregman
Extension no.	070-370 7468
E-mail	l.t.bregman@minjus.nl
Date	12 October 2005
Reference	ETS 167
Enclosure(s)	*

International Criminal Law and Drugs Policy Department

## Question 1

Has your country ratified the Additional Protocol?

**The Additional Protocol of 18 December 1997 was ratified by The Kingdom of the Netherlands on 18 June 2002. It has been applicable since 1 October 2002. In a declaration deposited on 18 June 2002, the Dutch government has specified that the Protocol is applicable within the territory of the Netherlands, the Netherlands Antilles and Aruba.**

## Question 2

If not, does your country intend to ratify in the near future?

## Question 3

Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded?

**The Kingdom of the Netherlands is party to the Schengen-treaty of 19 June 1990. This treaty was ratified by the Kingdom of the Netherlands on 30 July 1983 and has been applicable since 1 September 1993. Article 68 of this treaty is similar to the Additional**

**Protocol. It is currently applied by the following countries: Belgium, Germany, France, Greece, Italy, Luxemburg, Austria, Portugal, Spain and the Netherlands.**

**The Kingdom of the Netherlands is also party to the Convention between the member states of the European communities on the enforcement of foreign criminal sentences. This convention has not yet come into force. However, following article 21, paragraph 3, of the said Convention, it has been declared applicable by the Kingdom of the Netherlands, Germany and Latvia. The Convention has been applicable for the Kingdom of the Netherlands since 9 December 1997. The said Convention does not explicitly cover the situation of a fleeing detainee, but can be applied more broadly in the general circumstance that a convict is not located in the country of his conviction (following article 5 of the said Convention).**

Question 4

If you have ratified, how many transfer procedures initiated by your country have lead to transfer? To which countries?

**Unfortunately it is not possible to provide exact numbers.**

Question 5

For what reasons have transfers been prevented?

**I am unable to answer this question (see answer to question no. 4).**

Question 6

In your country, does a sentenced person have the possibility to appeal against a decision on transfer?

**In case of an outgoing request the sentenced person has the following option. According to the Dutch Law concerning the transfer of sentenced persons (Wet Overdracht Tenuitvoerlegging Strafvonnissen-10 September 1986), the Dutch Minister of Justice decides on specific cases of transfer from the Netherlands. Following article 52, paragraph 2, of the said Law a sentenced person can lodge a complaint against this decision with the court that has sentenced him. The outcome of this procedure is binding for the Minister of Justice.**

Question 7

What types of problems are to be considered as the main obstacle for application of the Protocol? What kind of proposed solutions could help to overcome these difficulties?

**The Dutch government would like to point out that the interpretation of the term “fleeing” as used in article 68 of the Schengen Treaty (the formulation of which is almost identical to that of the Additional Protocol) might differ from country to country. The Kingdom of the Netherlands understands it to only include those who flee directly from detention and not those who flee during probation or leave. Differences in interpretation do not necessarily lead to difficulty; however the Dutch authorities have had to explain their interpretation to other countries in the past.**

Deputy Head, Office of International Legal Assistance in Criminal Matters, for the Minister of Justice, H.A.T.G. Koning

**NORWAY**

Reg. PC-OC questionnaire 3/3: Additional protocol to the transfer convention

**1**

Q: Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

A: Yes.

**2**

Q: If not, does your country intend to ratify it in the near future?

A: N/A.

**3**

Q: Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

A: Norway has never transferred persons under such circumstances and our bilateral agreements on transfer do not incorporate this mode of transfer.

**4**

Q: If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of sentenced persons? To which countries have the persons been transferred?

A: Norway recently initiated its first transfer procedure under this Protocol (with Belgium). The procedure has so far not been brought to its conclusion.

**5**

Q: For what reasons have transfers been prevented?

A: N/A .

**6**

Q: In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

A: The Ministry decides whether a transfer shall take place. However, the individual may lodge a complaint against a decision allowing for such transfer and this complaint will then be decided by the Government as a collegium, through the use of a Royal Decree. If the transferee is still not satisfied with the decision, he may bring an action before the Courts against the Government.

**7**

Q: What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

A: Since we are currently seeking our first transfer under the Protocol, we have not accumulated sufficient knowledge to indicate relevant obstacles.

## SERBIA AND MONTENEGRO

### QUESTIONNAIRE IN CONNECTION WITH THE ADDITIONAL PROTOCOL TO THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS

1. In the State Union of Serbia and Montenegro, the Additional Protocol to the Convention on the Transfer of Sentenced Persons of 18<sup>th</sup> December 1997 became effective on 1<sup>st</sup> January 2003 (the Protocol was ratified on 30<sup>th</sup> September 2002, and the Convention on the Transfer of Sentenced Persons with the Additional Protocol was published in the *Official Gazette of the FRY – International Treaties [MU] No. 4/01*).

2. The State Union of Serbia and Montenegro acceded to the Additional Protocol to the Convention on the Transfer of Sentenced Persons on 30<sup>th</sup> September 2002 (*Official Gazette of the FRY No. 4/01*), which became effective on 1<sup>st</sup> January 2003, in accordance with Article 5 § 2 of the Protocol.

3. Serbia and Montenegro is party to the following bilateral agreements:

- a) Agreement between the SFRY and the Republic of Austria on Mutual Enforcement of Court Decisions in Criminal Matters, of 1<sup>st</sup> February 1982 (*Official Gazette of the SFRY-MU No. 6/83*); came into effect on 1<sup>st</sup> January 1984;
- b) Agreement between Serbia and Montenegro and the Federation of Bosnia and Herzegovina on Mutual Enforcement of Court Decisions in Criminal Matters of 24<sup>th</sup> February 2005 (*Official Gazette of SCG-MU No. 6/05*); not yet in effect;
- c) Agreement between the SFRY and the Czechoslovak Republic on Mutual Transfer of Sentenced Persons for the Purpose of Serving Prison Sentences of 23<sup>rd</sup> May 1989 (*Official Gazette of the SFRY-MU No. 6/90*), effective from 27<sup>th</sup> October 1990 (applicable to the Czech Republic and the Slovak Republic, as successors of Czechoslovakia);
- d) Agreement between the SFRY and the Kingdom of Denmark on Mutual Transfer of Sentenced Persons for the Purpose of Serving Prison Sentences of 28<sup>th</sup> October 1988 (*Official Gazette of the FRY-MU No. 5/89*), effective from 6<sup>th</sup> May 1989;
- e) Agreement between Serbia and Montenegro and the Republic of Macedonia on Legal Assistance in Civil and Criminal Matters of 6<sup>th</sup> July 2004 (*Official Gazette of SCG-MU No. 22/04*), effective from 9<sup>th</sup> March 2005, and
- f) Agreement between the SFRY and the Republic of Turkey on Mutual Transfer of Sentenced Persons for the Purpose of Serving Prison Sentences of 22<sup>nd</sup> June 1989 (*Official Gazette of SFRY-MU No. 7/90*), not yet effective.

As far as the circumstances referred to in Article 3 § 4.b of the Protocol are concerned, Article 27 of the SFRY-Austria Agreement on Mutual Enforcement of Court Decisions in Criminal Matters, Article 17 of the SFRY-Denmark Agreement on Mutual Transfer of Sentenced Persons for the Purpose of Serving Prison Sentences and Article 18 of the SFRY-Turkey Agreement on Mutual Transfer of Sentenced Persons for the Purpose of Serving Prison Sentences contain the provision contained in the said Paragraph. These bilateral agreements are concerned solely with transferring enforcement of prison sentences and not other measures, such as for example the security measure of expulsion of foreign citizens. The Agreement between the SFRY and the Republic of Austria on Mutual Enforcement of Court Decisions in Criminal Matters regulates the transfer of the enforcement of decisions issued by courts in one state party to the citizens of or persons with temporary or permanent residence on the territory of the other party, while the

Agreement between Serbia and Montenegro and the Federation of Bosnia and Herzegovina on Mutual Enforcement of Court Decisions in Criminal Matters, which concerns transfer of the enforcement of prison sentences and other detention measures pronounced by courts in one state party to the citizens of or persons with residence on the territory of the other state party in Article 19 also contain the said provision. These Agreements do not regulate question of mutual recognition of sentences between states, or transfer of the sentenced persons when at the same time those persons have other measures besides sentence, for example, deportation or expulsion measures. All of these Agreements as a condition for recognition and enforcing foreign sentences impose persons agree about the transfer. They allow enforcing the foreign sentence as a whole, or only a part of it, which could be not less than four, or six months. On the basis of such Agreements, the biggest numbers of the transfers were performed between Serbia and Montenegro and Republic of Austria.

4. According to available data, seven persons were transferred from Serbia and Montenegro to the Republic of Bulgaria and seven to the Republic of Romania in 2005. We received requests from Sweden (10 ) and Hungary (2)

5. Under Article 9 of the Convention on the Transfer of Sentenced Persons, an administering state shall:

- a) Continue enforcement of sentences immediately or through a court or administrative order, under the conditions set out in Article 10 the Convention, or
- b) Convert sentences, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State, under the conditions set out in Article 11 of the Convention. In the case of continued enforcement of a penalty, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State (Article 10 of the Convention), while in the case of conversion of sentence, the administering state shall apply procedures provided for by its own law and be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State (Article 11 of the Convention).

The Law on Criminal Procedure has opted in its Article 534 for the procedure set out in Article 9b, which means that problems could appear in respect of those states party whose domestic law features the procedure set out in Article 11 of the Convention.

6. Under Article 534 § 2 of the Law on Criminal Procedure (*Official Gazette of the FRY* Nos. 70/01, 68/02 and *Official Gazette of the RS* No. 58/04), domestic courts shall enforce legally-binding decisions on sanctions issued by foreign courts where that is prescribed by international agreement or on the basis of mutuality and if the sanction is also pronounced by a domestic court according to the criminal law of the Republic of Serbia. Appeals against the decision may be filed by the public prosecutor, the sentenced person or his/her defence attorney, the sentenced person's spouse, consanguine in the direct line, sibling, adopter, adoptee, foster-parent, common-law spouse or other person with whom the sentenced person lives in other sort of lasting relationship (Paragraph 7 of the same Article taken together with Article 364 § 2 of the Law on Criminal Procedure).

7. Domestic criminal procedural law applies the procedures contained in Article 11 of the Convention on the transfer of sentenced persons, taken together with Article 9b of the Convention, Article 534 of the Law on Criminal Procedure, which means that difficulties may arise in connection with countries whose law applies the procedure featured by Article 10 of the Convention. If a sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence (Article 10 § 2 of the Convention).



Under Article 12 of the Convention, Parties may grant pardons or amnesties or commute sentences in accordance with their constitutions or other laws. However, sentencing States may no longer enforce a sentence if the administering State considers enforcement of the sentence to have been completed (Article 8 § 2 of the Convention), and difficulties are possible in that context between Parties from Article 3 § 1.f with respect of reaching agreement.

When the question is Additional Protocol, requests mentioned above from Sweden have not been agreed and allowed because persons transferred opposed the transfer for private reasons. Under Article 3 point 2 Additional Protocol, requested state, which is Serbia and Montenegro, must before approval take into consideration opinion of the person whose transfer is requested. Persons who were sentenced in Sweden and whose transfer was requested as the reasons for opposing the transfer stipulated that they do not have any of the family relatives in our country, and that their families live in Sweden.

We are of opinion that question of transfer on the basis of Article 3 of the Additional Protocol; there is a question of approval of the transferred person. This question should not be treated automatically but from case to case and this article 3 should be read flexibly and in each case the state should take into consideration opinion of the sentenced person about the transfer. When, for example, sentenced person has formed a family in the sentencing state and there are some other important circumstances, this person should remain in the sentencing state. In that case, his transfer would provoke consequences in a harder process of rehabilitation, or worse economic position of his family, increasing the costs of visits etc.

In Serbia and Montenegro foreign sentences in criminal matters are not automatically enforced but for their recognition must be two conditions>1 Bilateral Agreement concluded with the state in question, or reciprocity, or 2. our court must convert the foreign sentence according domestic law. After this sentence of the domestic law becomes final, transfer can be performed. When there is a transfer from Serbia and Montenegro to other states, final decision is made by the competent court. But, even in these cases two countries must come to the agreement, because without agreement between states transfer can not take place.

**SLOVAKIA**

**Questionnaire by the PC-OC  
on the application of the Additional Protocol of 18 December 1997 to the Convention  
on the transfer of sentenced persons  
(ETS 167)**

**I- Introduction :**

The Additional Protocol establishes the legal basis on which states can ensure that sentenced foreigners serve their sentence in their country of origin even where the person concerned does not agree, although this possibility is limited to specific circumstances.

The success of co-operation based on the Protocol depends primarily on its ratification and implementation by the states parties to the Transfer Convention. However, since the opening of the Protocol to signature, only 25 States have ratified it, compared to 60 ratifications of the mother Convention.

In order to obtain information on the experience of States having ratified the Protocol, the present questionnaire has been drafted and is sent to the PC-OC's members and observers.

On the basis of the replies, the Secretariat will prepare, in consultation with the representative from Switzerland, the elements for a discussion on concrete suggestions which could be adopted by the PC-OC at its next meeting (March 2006) and submitted to the CDPC (April 2006).

**II- Questions :**

1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

**No, the Slovak Republic did not ratify the Additional Protocol.**

2. If not, does your country intend to ratify it in the near future?

**No, the Slovak Republic does not intend to ratify it in the near future.**

3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

**The Slovak Republic transfers the sentenced persons on the basis of Articles 67 - 69 of the Schengen Convention (applicable for the Slovak Republic through the Treaty on Accession to the European Union). The Contracting Party in whose territory a sentence of deprivation of liberty or a detention order has been imposed in a final**

**judgement in respect of national of another Contracting Party who, by escaping to his own country, has avoided the execution of that sentence or detention order, may request the latter Contracting Party, if the escaped person is in its territory, to take over the execution of the sentence or of the detention order. The consent of the person is not required. No statistical data is available, but the provision is applied very rarely, since the Slovak Republic can surrender its own nationals to the EU Member States for the purpose of criminal proceedings or enforcement of the sentence.**

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

-

5. For what reasons have transfers been prevented?

-

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

**In the framework of the application of the Convention, no possibility to appeal against a decision of transfer exists. However, the person to be transferred to Slovakia can appeal against a decision on the recognition of foreign judgment in Slovakia and/or he can also withdraw his consent subsequent such recognition. This does not, however, apply in the context of the Protocol since the Slovak Republic did not ratify it.**

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

**In our view the content of the Protocol is not consistent with the main purpose of the mother Convention, namely the social rehabilitation. According to the experts in the prison field the social rehabilitation cannot be achieved if the person does not consent to the transfer. The Protocol tried to solve the problem of non- extradition of nationals. This problem could be solved by the additional protocol to the European Convention on Extradition, which might introduce the full application of aut dedere aut iudicare principle.**

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**SLOVENIA**

**Questionnaire by the PC-OC  
on the application of the Additional Protocol of 18 December 1997 to the  
Convention on the transfer of sentenced persons  
(ETS 167)**

**I- Introduction :**

The Additional Protocol establishes the legal basis on which states can ensure that sentenced foreigners serve their sentence in their country of origin even where the person concerned does not agree, although this possibility is limited to specific circumstances.

The success of co-operation based on the Protocol depends primarily on its ratification and implementation by the states parties to the Transfer Convention. However, since the opening of the Protocol to signature, only 25 States have ratified it, compared to 60 ratifications of the mother Convention.

In order to obtain information on the experience of States having ratified the Protocol, the present questionnaire has been drafted and is sent to the PC-OC's members and observers.

As agreed at the PC-OC's 50th meeting, **the replies to the questionnaire should reach the Secretariat by 15 October 2005.**

On the basis of the replies, the Secretariat will prepare, in consultation with the representative from Switzerland, the elements for a discussion on concrete suggestions which could be adopted by the PC-OC at its next meeting (March 2006) and submitted to the CDPC (April 2006).

**II- Questions :**

1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

**1. The Republic of Slovenia has not yet ratified the Additional Protocol to the Convention on the transfer of sentenced persons.**

2. If not, does your country intend to ratify it in the near future?

**2. The Republic of Slovenia does intend to ratify the Protocol in the near future. The decision making process concerning the ratification of the Protocol is in progress.**

3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

**3. The Republic of Slovenia does not have any other agreements on the transfer of persons covered by the Protocol.**

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

**4. Because the Republic of Slovenia did not ratify the Protocol we can not answer to this question.**

5. For what reasons have transfers been prevented?

**5. See the answer to question 4.**

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

**6. In the Republic of Slovenia a sentenced person does have the possibility to appeal against a decision of transfer in accordance with the Article 517 paragraph 6 of the Criminal Procedure Act (Official Gazette of the Republic of Slovenia, No 96/2004).**

*Article 517 provides:*

*"(1) Domestic court may grant the request of a foreign agency for execution of a judgement of conviction passed by a foreign court if so provided by the international agreement or if reciprocity exists.*

*(2) In the instance referred to in the preceding paragraph the domestic court shall execute punishment imposed by a final judgement of a foreign court by imposing sanction in accordance with the legislation of the Republic of Slovenia.*

*(3) The court of jurisdiction shall pass judgement in the panel of judges referred to in the sixth paragraph of Article 25 of the present Code. The public prosecutor and defence counsel shall be informed about the session of the panel.*

*(4) Territorial jurisdiction of the court shall be determined according to the last permanent residence of a convicted person in the Republic of Slovenia. If a convicted person had no permanent residence in the Republic of Slovenia territorial jurisdiction shall be determined according to his place of birth. If a convicted person neither had permanent residence nor was born in the Republic of Slovenia the supreme court shall assign the conduct of proceedings to one of the courts of real jurisdiction.*

*(5) In the enacting terms of the judgement from paragraph three of this Article the court shall enter in full the enacting terms of the judgement of the foreign court and the name of the foreign court and shall pronounce sanction. In the statement of reasons the court shall state the grounds for the sanction which it has passed.*

*(6) An appeal may be lodged against the judgement by the public prosecutor, the convicted person and his defence counsel.*

*(7) If an alien sentenced by a domestic court, or a person authorised under a contract, files with the court of first instance petition for the convicted person to serve the sentence in his country, the court shall be entitled to grant petition if so provided by the international agreement or if reciprocity exists.*

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

**7. See the answer to question 4.**

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**SPAIN**

**Questionnaire du PC-OC**  
**relatif à l'application du Protocole additionnel du 18 décembre 1997 à la Convention**  
**sur le transfèrement des personnes condamnées (STE N° 167)**

**I- Introduction :**

Le Protocole additionnel constitue la base légale qui permet aux Etats contractants d'obtenir que des personnes étrangères condamnées purgent une peine privative de liberté dans leur pays d'origine, et ce même, dans deux cas spécifiques, contre leur gré.

Le succès d'une collaboration fondée sur le Protocole dépend, en premier lieu, de la ratification et de la mise en pratique de l'instrument par les Etats parties à la Convention sur le transfèrement. Or, depuis l'ouverture à la signature du Protocole, le nombre de ratifications ne s'élève qu'à 25 Etats, alors que près de 60 Etats ont adhéré à la Convention sur le transfèrement.

En vue d'obtenir des informations sur les expériences faites par les Etats qui sont parties au Protocole le questionnaire ci-dessous a été élaboré en vue d'être adressé à tous les membres du PC-OC ainsi qu'aux Etats observateurs du Comité.

Comme convenu lors de la 50<sup>ème</sup> réunion du PC-OC, **les réponses au questionnaire devraient parvenir au Secrétariat avant le 15 octobre 2005.**

Des éléments seront préparés sur base des réponses en vue d'une discussion à ce sujet, lors de la 51<sup>ème</sup> réunion du PC-OC (mars 2006). Le PC-OC devrait proposer des suites concrètes au CDPC pour sa prochaine session plénière (avril 2006).

**II- Questions :**

1. Votre pays a-t-il ratifié le Protocole additionnel à la Convention sur le transfèrement des personnes condamnées ?
2. Si votre pays ne l'a pas fait, compte-t-il ratifier le Protocole prochainement ?
3. Votre pays opère-t-il des transfèvements couverts par le Protocole sur une autre base, telle des accords bilatéraux ? Si oui, avec quels pays ces accords ont-ils été conclus ? Veuillez donner des statistiques de mise en œuvre de ces accords bilatéraux.
4. Si votre pays a ratifié le Protocole additionnel, combien de procédures de transfèrement se sont terminées dans votre pays par le transfèrement de la personne condamnée? Dans quels pays les personnes concernées ont-elles été transférées?
5. Quels ont été les motifs les plus fréquents ayant empêché un transfèrement?

6. Dans votre pays, la personne qui doit être transférée dispose-t-elle d'une voie de recours pour s'opposer à la décision de transfèrement?

7. Quels sont les types de problèmes qui constituent l'obstacle majeur à l'application du Protocole additionnel? Quelles sont les propositions de solutions qui devraient être mises en oeuvre?

ANSWERS TO QUESTIONNAIRE ON THE ADDITIONAL PROTOCOL TO THE EUROPEAN COUNCIL CONVENTION 112 ON THE TRANSFER OF CONVICTED PERSONS.

1.- No.

2.- The Ministry of Justice has already formally requested the Ministry of Foreign Affairs to start the internal procedures so that it is adopted by Parliament.

3.- Spain does not have bilateral or multilateral agreements which provide for similar proceedings. However, within the frame of the European Union, Articles 68 and 69 of the Schengen Convention, describe a scenario with similar effects, when the person has escaped from the sentencing country. About seven or eight cases have been dealt with every year, under the Schengen Convention.



**SWEDEN****Ministry of Justice  
Sweden**

*Division for Criminal Cases and  
International Judicial Co-operation  
Per Hedvall, Director  
Telephone +46 8 405 5048  
Fax +46 8 405 4676  
E-mail per.hedvall@justice.ministry.se*

6 September 2005  
PC-OC

**Questionnaire on the Additional Protocol to the Convention on the Transfer of Sentenced Persons**

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1. Yes

2. –

3. The Schengen implementation Convention (Articles 67-69) has, in a few cases, been used to transfer the execution of a sentence to another Member State.

4. Up to date 90 persons have been transferred to their home countries under the Additional Protocol. Transfers have been made to Estonia, Lithuania, Poland, Romania, Hungary and Austria.

5. In some cases the procedure has been so long that the sentenced person has been conditionally released (or the remaining time to serve before conditional release has been too short). In a few other cases the requested state has rejected the request on the grounds that the person had too strong links to Sweden.

6. The decision of the Swedish National Prison and Probation Administration to transfer a sentenced person can be appealed to the Swedish Government.

7. The main problem is that the procedure in many cases is very time consuming. In Sweden we have tried to meet this problem by education of officers at prisons and by continuous discussions between officers at the Ministry and the National Prison and Probation Administration on how to streamline the procedure while, of course, maintaining the rule of law.

Another problem is of course the low number of states that has ratified the Protocol. We hope that the discussions following this questionnaire will improve this situation.

**SWITZERLAND**

**Questionnaire du PC-OC  
relatif à l'application du Protocole additionnel du 18 décembre 1997 à la Convention  
sur le transfèrement des personnes condamnées (STE N° 167)**

**I- Introduction :**

Le Protocole additionnel constitue la base légale qui permet aux Etats contractants d'obtenir que des personnes étrangères condamnées purgent une peine privative de liberté dans leur pays d'origine, et ce même, dans deux cas spécifiques, contre leur gré.

Le succès d'une collaboration fondée sur le Protocole dépend, en premier lieu, de la ratification et de la mise en pratique de l'instrument par les Etats parties à la Convention sur le transfèrement. Or, depuis l'ouverture à la signature du Protocole, le nombre de ratifications ne s'élève qu'à 25 Etats, alors que près de 60 Etats ont adhéré à la Convention sur le transfèrement.

En vue d'obtenir des informations sur les expériences faites par les Etats qui sont parties au Protocole le questionnaire ci-dessous a été élaboré en vue d'être adressé à tous les membres du PC-OC ainsi qu'aux Etats observateurs du Comité.

Comme convenu lors de la 50<sup>ème</sup> réunion du PC-OC, **les réponses au questionnaire devraient parvenir au Secrétariat avant le 15 octobre 2005.**

Des éléments seront préparés sur base des réponses en vue d'une discussion à ce sujet, lors de la 51<sup>ème</sup> réunion du PC-OC (mars 2006). Le PC-OC devrait proposer des suites concrètes au CDPC pour sa prochaine session plénière (avril 2006).

**II- Questions :**

1. Votre pays a-t-il ratifié le Protocole additionnel à la Convention sur le transfèrement des personnes condamnées ?

Oui; le Protocole additionnel est entré en vigueur le 1er octobre 2004.

2. Si votre pays ne l'a pas fait, compte-t-il ratifier le Protocole prochainement ?

Sans objet, au vu de la réponse à la première question.

3. Votre pays opère-t-il des transfèrments couverts par le Protocole sur une autre base, telle des accords bilatéraux ? Si oui, avec quels pays ces accords ont-ils été conclus ? Veuillez donner des statistiques de mise en œuvre de ces accords bilatéraux.

Actuellement, la Suisse n'a pas conclu d'accord bilatéral dans le domaine couvert par le Protocole additionnel.

4. Si votre pays a ratifié le Protocole additionnel, combien de procédures de transfèrement se sont terminées dans votre pays par le transfèrement de la personne condamnée? Dans quels pays les personnes concernées ont-elles été transférées?

Au vu de la période relativement courte depuis l'entrée en vigueur du Protocole additionnel, la Suisse ne dispose pas d'une grande expérience. En l'état actuel, la Suisse a fait trois demandes de transfèrement basées sur l'article 3 du Protocole additionnel, une adressée à l'Autriche, une aux Pays Bas et une à la Serbie Monténégro. Le transfèrement depuis l'Autriche a pu être effectué, la deuxième demande a été retirée par la Suisse en raison de la libération conditionnelle de la personne concernée, la troisième demande est encore pendante.

La Suisse n'a pas encore reçu de demande de transfèrement basée sur l'article 3 du Protocole additionnel.

5. Quels ont été les motifs les plus fréquents ayant empêché un transfèrement?

La Suisse ne dispose pas encore d'assez d'expérience pour être en mesure de répondre à cette question.

6. Dans votre pays, la personne qui doit être transférée dispose-t-elle d'une voie de recours pour s'opposer à la décision de transfèrement?

Oui.

7. Quels sont les types de problèmes qui constituent l'obstacle majeur à l'application du Protocole additionnel? Quelles sont les propositions de solutions qui devraient être mises en oeuvre?

Transfèrements à l'étranger:

- Problème du droit interne: il faut souvent compter avec une longue durée (diffère de canton à canton) jusqu'à ce qu'une mesure d'expulsion ou de reconduite définitive soit prononcée, condition pour que la procédure de transfèrement puisse être engagée;
- Des pays qui pourraient entrer en ligne de compte pour la Suisse n'ont pas encore ratifié le Protocole additionnel (notamment l'Italie, l'Espagne, le Portugal, l'Albanie et la Turquie).
- Longue durée d'une procédure de transfèrement basée sur le Protocole additionnel (le problème de la longue durée de la procédure existe aussi concernant les transfèrements en application de la Convention sur le transfèrement des personnes condamnées). En pratique, une procédure de transfèrement est initiée à partir d'un reste de peine d'une année.
- La Suisse s'abstient d'initier une procédure de transfèrement s'il convient de supposer que le transfèrement aura pour conséquence que la personne condamnée bénéficiera d'une exécution de peine bien plus avantageuse pour

elle à l'étranger qu'en Suisse, par exemple en raison d'une libération conditionnelle bien plus rapidement obtenue qu'en Suisse ou si ou l'adaptation du jugement devait conduire à une différence considérable.

- Dans certains Etats existent des problèmes en matière de droits de l'homme, en matière de garanties minimales concernant l'exécution de la peine et en matière de garanties concernant une procédure équitable. Si les exigences dans ces domaines ne sont pas réalisées, la Suisse ne peut envisager de transfèrement concernant ces pays.

#### Transfèrements vers la Suisse

- La Suisse ne dispose pas encore d'expériences en la matière.

#### Propositions de solutions

- Pouvoir conduire un grand nombre d'Etats à ratifier le Protocole additionnel.

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**THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA**

**Questionnaire by the PC-OC  
on the application of the Additional Protocol of 18 December 1997 to the Convention  
on the transfer of sentenced persons  
(ETS 167)**

**I- Introduction:**

The Additional Protocol establishes the legal basis on which states can ensure that sentenced foreigners serve their sentence in their country of origin even where the person concerned does not agree, although this possibility is limited to specific circumstances.

The success of co-operation based on the Protocol depends primarily on its ratification and implementation by the states parties to the Transfer Convention. However, since the opening of the Protocol to signature, only 25 States have ratified it, compared to 60 ratifications of the mother Convention.

In order to obtain information on the experience of States having ratified the Protocol, the present questionnaire has been drafted and is sent to the PC-OC's members and observers.

As agreed at the PC-OC's 50th meeting, **the replies to the questionnaire should reach the Secretariat by 15 October 2005.**

On the basis of the replies, the Secretariat will prepare, in consultation with the representative from Switzerland, the elements for a discussion on concrete suggestions which could be adopted by the PC-OC at its next meeting (March 2006) and submitted to the CDPC (April 2006).

**II- Questions :**

1. Has your country ratified the Additional Protocol to the Convention on transfer of sentenced persons?

**On 01.11.1999, Republic of Macedonia ratified the Additional Protocol to the Convention on the transfer of sentenced persons, simultaneously with the ratification of the Convention on the transfer of sentenced persons.**

2. If not, does your country intend to ratify it in the near future?

**Republic of Macedonia ratified the Additional Protocol to the Convention on transfer of sentenced persons.**

3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

- i. **Agreement between the Republic of Macedonia and the Republic of Slovenia on surrender (“Official gazette of RM” No.24/96) – came into force on 05.09.1997.**
- ii. **Agreement between the Macedonian and the Albanian government on mutual enforcement of judicial decisions in criminal matter (“Official gazette of RM” No. 16/98) - came into force on 02.10.1998.**
- iii. **Agreement on mutual cooperation in civil and criminal matters between the Republic of Macedonia and the Republic of Turkey (“Official gazette of RM” No.23/97) - came into force on 28.07.2000.**
- iv. **Agreement on legal assistance between the Republic of Macedonia and Serbia and Montenegro in civil and criminal matters - came into force on 09.03.2005.**
- v. **Interim Protocol on transfer of sentenced persons between the Provisional Administration of the United Nations in Kosovo UNMIK and the Ministry of Justice of the Republic of Macedonia ( By exchange of letters of consent on 12.11.2004, it came into force).**
  - **On 25.03.2005, the Agreement on legal assistance between the Republic of Macedonia and Bosnia and Herzegovina for mutual enforcement of judicial decisions in criminal matter was paraphed.**

**The provisions of these Bilateral Agreements are based on the European Convention on transfer of sentenced persons, but not on the provisions that are regulated with the Additional Protocol to the Convention on transfer of sentenced persons.**

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

**So far, there were three requirements for transfer of sentenced persons obtained, according to the Additional Protocol of Sweden, but none of them was dealt with, as, in respect of the two cases, the Court of First instance has made a negative decision, refusing the requirement for transfer, on the basis of the lack of consent of the sentenced person for transfer, whereas with regard to the third requirement there is still no answer from the Basic court.**

5. For what reasons have transfers been prevented?

**Financial reasons.**

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

**According to article 350 of the Law on criminal procedure, the sentenced person has a right to appeal the judgment delivered by the Court of First instance, admitting the foreign judgment according to which he serves the sentence imprisonment in the foreign country.**

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

**What is necessary, is an explanation, that is, taking into consideration the statement, containing the opinion of the sentenced person, as well as the question whether the statement has a decisive meaning while deciding for the recognition or non recognition of the judgment, while taking into account that article 3 of the Additional Protocol to the Convention on transfer of sentenced persons expressly provides that, to the requirement by the state in which the judgment is delivered, the state in which the sentence is enforced, may, by applying the provisions of this article, provide an approval for transfer of sentenced persons without his consent.**

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**TURKEY**

**Questionnaire by the PC OC  
on the application of the Additional Protocol of 18 December 1997 to the Convention  
on the transfer of sentenced persons  
(ETS 167)**

**TURKEY**

**Questions And Answers:**

**Q:** 1-Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

**A:** No.

**Q:** 2 - If not, does your country intend to ratify it in the near future?

**A:** There is no plan for near future.

**Q:** 3- Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

**A:** No.

**Q:** 4 - If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

**A:** No data available.

**Q:** 5 - For what reasons have transfers been prevented?

**A:** No data available.

**Q:** 6 - In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

**A:** No data available.

**Q:** 7 - What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

**A:** No data available.

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## UKRAINE

### II- Questions :

1. Has your country ratified the Additional Protocol to the Convention on the transfer of sentenced persons?

**Yes, the Additional Protocol to the Convention on the transfer of sentenced persons was ratified 03.04.2003, entered into force for Ukraine 01.11.2003.**

2. If not, does your country intend to ratify it in the near future?

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3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements? If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

Moreover, it was concluded the **Treaty between Ukraine and Moldova on legal assistance and legal relations on civil and criminal matters**, which contains relevant provisions on transfer of sentenced persons (signature 13.12.1993, ratification 10.11.1994, entry into force 24.04.1995)

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

**There is no any transfer procedure, initiated in Ukraine according to the Protocol. The reason is that the Criminal Code of Ukraine does not foresee such punishment as the expulsion or deportation from the country. Now the Ministry of Justice of Ukraine considers the request from other countries on transfer on basis to the Protocol to the Convention on the Transfer of Sentenced Persons, among them, from the Czech Republic – 9 (transferred to Ukraine – 5, refused – 4); from the Republic of Poland – 26 (transferred to Ukraine – 10, refused on – 6); from the Republic of Hungary - 5 (transferred to Ukraine – 2, refused – 3).**

5. For what reasons have transfers been prevented?

The main reasons on prevention of the transfer were a health status of sentenced persons when the transfer to the other country could entail to his/her ill health; when the sentenced person still has at least four months of the sentence to serve, and such transfer is not advisable.

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

The Constitution of Ukraine provides for a guarantee for everyone the right to challenge in court the decisions, actions or omission of the public authorities, authorities of local self-government, officials and officers. Everyone has the right to appeal for the protection of his/her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine (ombudsman).

According to the Criminal Procedural Code of Ukraine the sentenced person, or his/her legal representative and defender has the right to appeal of the sentence and other decision in the part related to interests of the sentenced person.

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

The main obstacle to the application of the Protocol still has an objection of a sentenced person to be transferred to the other country for further serving the sentence, which leads to a conflict between the Convention on Transfer of Sentenced Persons and the Protocol to this Convention. For solution of this problem it will be useful to continue the consideration of this issue on the next meeting of the PC-OC, and if it is necessary to request before the European Court of Human Rights to consider correspondence between the Convention, Article 3 paragraph 2 of the Protocol and the Convention on Human Rights.

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**UNITED STATES OF AMERICA**

**REPLY OF THE UNITED STATES TO THE  
PC-OC QUESTIONNAIRE ON THE APPLICATION OF  
THE ADDITIONAL PROTOCOL OF 18 DECEMBER 1997  
TO THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS**

**1. HAS YOUR COUNTRY RATIFIED THE ADDITIONAL PROTOCOL TO THE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS?**

The United States has not ratified the additional protocol of 18 December 1997.

**2. IF NOT, DOES YOUR COUNTRY INTEND TO RATIFY IT IN THE NEAR FUTURE?**

The United States does not intend to ratify the protocol in the future. The protocol permits a country to transfer a prisoner without his consent. In the United States, federal statutory law and Constitutional protections prohibit the transfer of a prisoner without his consent. Because the protocol permits the transfer of a prisoner without his consent, the United States believes that ratification would be contrary to statutory and Constitutional law.

**3. DOES YOUR COUNTRY TRANSFER PERSONS IN CIRCUMSTANCES COVERED BY THE PROTOCOL ON ANOTHER BASIS THAN THE PROTOCOL, SUCH AS BILATERAL AGREEMENTS? IF YES, WITH WHICH COUNTRIES HAVE SUCH AGREEMENTS BEEN CONCLUDED? PLEASE PROVIDE WITH STATISTICS ON THE IMPLEMENTATION OF SUCH AGREEMENTS.**

As stated above, the United States has not ratified the protocol. In addition to being a signatory to the COE Transfer Convention, the United States is a signatory to the Inter-American Convention on Serving Criminal Sentences Abroad and has separate bilateral treaties and transfer agreements with the governments of Bolivia, Canada, France, Hong Kong, Marshall Islands, Mexico, Federated States of Micronesia, Republic of Palau, Panama, Peru, Thailand, and Turkey. Our most active bilateral relationships are with Mexico and Canada. In the past, there has also been a significant number of transfers from Panama, Peru, and Thailand.

**4. IF YOU HAVE RATIFIED THE PROTOCOL, HOW MANY TRANSFER PROCEDURES INITIATED IN YOUR COUNTRY HAVE LEAD TO THE TRANSFER OF A SENTENCED PERSONS? TO WHICH COUNTRIES HAVE THE PERSONS BEEN TRANSFERRED?**

See the response to Question 1.

**5. FOR WHAT REASONS HAVE TRANSFERS BEEN PREVENTED?**

See the response to Question 1.

**6. IN YOUR COUNTRY, DOES A SENTENCED PERSON HAVE THE POSSIBILITY TO APPEAL AGAINST A DECISION OF TRANSFER?**

As a general matter, In the United States, the transfer decision is viewed as a discretionary act for which there is no right of appeal. However, since a prisoner must consent to transfer in the United States, there would be no occasion where he would be transferred against his will.

**7. WHAT TYPES OF PROBLEMS ARE TO BE CONSIDERED AS THE MAIN OBSTACLE TO THE APPLICATION THE ADDITIONAL PROTOCOL? WHAT KIND OF PROPOSED SOLUTIONS COULD HELP TO OVERCOME THESE DIFFICULTIES?**

See the response to Question 2.

**JAPAN**

Questionnaire on the Additional Protocol to the Convention  
on the Transfer of Sentenced Persons  
(ETS 167)

Question

1. Has your country ratified the Additional Protocol to the Convention on the Transfer of Sentenced Persons?

Answer

Japan has not ratified the Additional Protocol.

Question

2. If not, does your country intend to ratify it in the near future?

Answer

Japan is not considering ratification of the Additional Protocol for the present time.

Question

3. Does your country transfer persons in circumstances covered by the Protocol on another basis than the Protocol, such as bilateral agreements?

Answer

No, we do not.

Question

- 3.-2 If yes, with which countries have such agreements been concluded? Please provide with statistics on the implementation of such agreements.

Answer

N/A

Question

4. If you have ratified the Protocol, how many transfer procedures initiated in your country have lead to the transfer of a sentenced persons? To which countries have the persons been transferred?

Answer

N/A

Question

5. For what reasons have transfers been prevented?

Answer

N/A

Question

6. In your country, does a sentenced person have the possibility to appeal against a decision of transfer?

Answer

In Japan, a sentenced person can appeal against a decision of transfer.

Question

7. What types of problems are to be considered as the main obstacle to the application of the additional Protocol? What kind of proposed solutions could help to overcome these difficulties?

Answer

Japan has not examined possible problems concerning the application of the additional protocol, because Japan is not considering the ratification of the Additional Protocol for the present time.