



Strasbourg, 7 April 2006

**CDPC (2006) 16**

**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**Opinion on  
the Additional Protocol to the European Convention on the  
Transfer of Sentenced Persons (ETS 167)**

**Adopted by the CDPC at its 55th plenary meeting (3-7 April 2006)**

1. At its meeting on 17-19 January 2005, the Bureau of the CDPC had asked the PC-OC to prepare a document on the difficulties posed by the Additional Protocol to the European Convention on the Transfer of Sentenced Persons (ETS 167).
2. The PC-OC discussed the matter at its 50<sup>th</sup> meeting (27-29 June 2005) and decided to complete its information by a questionnaire addressed to all its members.
3. The replies to the questionnaire are collected in the document PC-OC (2005)21rev1.
4. Following a preliminary discussion on this issue in the Bureau (October 2005), the PC-OC adopted this Opinion at its 51<sup>st</sup> meeting (1-3 March 2006) and decided to send it to the CDPC.

#### General considerations on the additional Protocol

5. The PC-OC underlines the fact that the application of Convention ETS 112 and of its protocol (ETS 167) is left to states' discretion. Since the Convention was designed to serve prisoners' interests by encouraging their re-socialisation, States have to obtain their consent for any transfer.
6. However, the Protocol provides for two particular circumstances in which the consent of the sentenced person is not required, namely:
  - where the prisoner has escaped from prison to his or her country of origin;
  - where the prisoner is the subject of an expulsion or a deportation order to his or her country of origin.
7. Certain countries found it difficult to reconcile this absence of consent with the goal of reintegrating prisoners into their environment of origin.
8. This therefore made it difficult for them to ratify the Protocol. They believed that this primary objective, perhaps even *raison d'être*, of the parent convention, the social reintegration of prisoners, was not reflected in the Protocol.
9. Other countries did not consider the lack of individual consent in the cases specified in the Protocol to be incompatible with the objectives of prisoners' reintegration and resocialisation. They believed that in the majority of cases, it was easier to secure these objectives in prisoners' countries of origin.
10. The PC-OC further observes that:
  - the application of the Protocol, in cases where sentences were accompanied by an expulsion order, has some similarities with extradition;
  - some Member States consider that the European Convention on the transfer of proceedings in criminal matters (ETS 73) may offer a useful alternative;

#### Cases before the European Court of Human Rights (ECHR).

11. The Committee examined two cases brought before the European Court of Human Rights. They concerned Estonian citizens convicted in Finland. Finland was seeking their transfer to their country of origin, mainly on the basis of the Additional Protocol. The matters referred to before the Court related mainly to the execution of the sentence in the executing State, where the possibilities for conditional release were less advantageous for the prisoner than in the sentencing/requesting State.
12. In the first case, *Altosaar v. Finland*, on 15 June 2004 the Court had ruled the application inadmissible. Mr Altosaar had been granted a conditional release in Finland and was residing in Estonia, at liberty. He could not therefore claim to be suffering a violation of his rights under the Convention (Article 5 – deprivation of liberty).

13. The Court had ruled that a second case, Veermaë v. Finland, was inadmissible. The applicant had alleged violations of articles 5 (deprivation of liberty), 6 (right to a fair trial) and 14 (discriminatory treatment), because the sentence he would have to serve in Estonia after his transfer would be longer than the one he would normally have expected in Finland (same arguments as those raised in the Altosaar case). Finnish law authorised conditional release after half the sentence has been served. Under Estonian law, such release is only possible, subject to certain conditions, after two-thirds had been served.
14. In response to the points raised under article 5 of the Convention, the Court considered that:
- even if, as a result of the application for a transfer, the applicant would spend longer in prison this did not, as such, constitute an increase in his sentence;
  - there was a causal link between the sentence handed down (in Finland) and carried out (in Estonia);
  - there was nothing arbitrary about the detention, since the sentence served would not exceed the length of sentence handed down by the convicting court;
  - nor was there a flagrant difference or disproportion between the periods of imprisonment in the two countries.

#### Conclusion

15. The PC-OC is of the opinion that, when dealing with cases of escape of prisoners, the Protocol ensures that the prisoner does not escape justice and, when dealing with prisoners subject to an expulsion or a deportation order, it ensures the start of the re-socialisation process at an early stage.
16. It further underlines that, when applying the Protocol, States parties should seek the *opinion* of the sentenced person, as required by the Art 3.2 of the Protocol, and the competent authorities should take particular account of this in deciding whether or not a transfer was appropriate, although *consent* of the person is not required.
17. The PC-OC has taken note of the existing case law of the European Court of Human rights and will continue to follow closely the application of this Protocol, especially with regard to the development of the case law of the European Court of Human Rights.