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EUROPEAN COMMITTEE ON CRIME PROBLEMS

(CDPC)

COMMITTEE OF EXPERTS

ON THE OPERATION OF EUROPEAN CONVENTIONS

ON CO-OPERATION IN CRIMINAL MATTERS

(PC-OC)

**Practical problems and legal questions
raised with regard to the transfer of sentenced persons**

Replies from: Denmark, Finland, Norway and Sweden

DENMARK / DANEMARK

The Danish Ministry of Justice can inform you of the following.

Additional Protocol to the Convention on the Transfer of Sentenced Persons

- a. The Danish Ministry of Justice notes that certain Parties to the Additional Protocol to the Convention on the Transfer of Sentenced Persons in relation to the declaration mentioned in Article 3, Subsection 2(a) of the Additional Protocol, require a personal declaration from the sentenced person regarding his or her opinion as to his or her proposed transfer. As the Additional Protocol is applied when the sentenced person is not willing to consent to a transfer, obtaining a personal declaration from the sentenced person can be difficult, particularly if the sentenced person is aware that the lack of such a declaration can hinder his or her possible transfer.
- b. The Danish Ministry of Justice notes that certain Parties to the Additional Protocol to the Convention on the Transfer of Sentenced Persons have complicated legal procedures, including preceding judicial review, when considering requests for transfer of a sentenced person. This makes the process of a request for transfer of a sentenced person very slow and can lead to a withdrawal of a request for transfer, if the sentenced person is expected to be released (e.g. on parole) before the request for transfer can be processed.

FINLAND / FINLANDE

In general, it seems that regarding transfer of sentenced persons the most difficult problem is that the process takes too long – up to 1-3 years. Perhaps one could discuss what possibilities are there to streamline the process. Regarding the Additional Protocol we have not faced any special problems.

NORWAY / NORVÈGE

- Requests for transfer to one Party to the Additional Protocol are not being agreed to by that Party because the sentenced persons do not consent to the transfer. The Party seems to be of the opinion that the inmates' social rehabilitation will be best achieved by not transferring them involuntarily, even though the inmates in question as a result of their expulsion order will be sent back to that Party simultaneously with their release from the Norwegian prison. The Additional Protocol imposes no obligation on the administering State to agree to transfer. Still, we are of the opinion that it is to the benefit of the sentenced persons to be rehabilitated in the country where they will continue to stay after release from prison.

- We would also like to draw attention to the question as to whether there should be a time limit for withdrawing a consent to transfer. If a sentenced person consents to be transferred to his or her country of origin, a request is made under the Convention even though the person in question is expelled from Norway. Consequently, there might not be enough time to start the process of transfer in accordance with the Additional Protocol. We have also experienced the withdrawal of consent shortly before a transfer is due to take place. Therefore, introducing a time limit might be helpful to reduce the disadvantages that a late withdrawal represents.

- Finally, we would like to focus on whether it is necessary to translate an expulsion order. From our point of view it might be sufficient that the Ministry of Justice of the sentencing State confirms that the person in question is finally expelled. The process of transferring sentenced persons will be simplified and the costs reduced if a confirmation from the sentencing State is satisfying in this regard.

SWEDEN / SUÈDE

- Some states that have ratified the Additional Protocol to the transfer convention denies transfers on the grounds that the sentenced persons does not consent to transfer. We have experienced this in many cases concerning transfer under Article 3 of the Protocol. It is true that neither the Convention nor the Protocol is mandatory. We do however count on that states that ratify the Protocol has a will and capability to cooperate. The possibility to transfer sentenced persons without those persons consent (for example when they are to be expelled) is the raison d'être for the Protocol.

- We have also encountered some cases were the country of citizenship has denied transfer (even in cases were the sentenced person consent to transfer and will be expelled from Sweden after having served the sentence) on the grounds that the sentenced person is a recidivist and that there is no or little possibility for social rehabilitation.

- Many cases are extremely time-consuming. Sometimes we do not get an answer to our request at all.

- One country decides that the sentenced persons shall be transferred but they never arrange the transports.