Faculty of Law, Uppsala University
&
Swedish Society for European Criminal Law

Nordic Judicial Co-operation in Criminal Matters

Petter Asp

NORDIC JUDICIAL CO-OPERATION IN CRIMINAL MATTERS

Petter Asp

ISBN 91-7678-394-4
Tryck: Idétryck, Uppsala 1998

Contents

1 Introduction*

1.1 General

The Nordic states—Denmark, Finland, Iceland, Norway and Sweden—have a long tradition of co-operation in judicial matters. This is true also in the sphere of criminal law. One can say that this is due to geographical proximity, linguistic similarity (with the exceptions of the non-Swedish speaking Finns and the Icelanders), a common cultural background and common political and economic interests.

It might be worth mentioning that the Nordic states have been united in different constellations during history. (Finland was a part of Sweden until 1809.) In 1397 Denmark, Sweden and Norway entered into a union with each other—the so-called Kalmar union—in order, *inter alia*, to prevent the expansion of the German realm. In a letter it was declared that the three states involved never were to be separated again. The union lasted until 1523, but up to the beginning of the 19th century there were two big kingdoms in the Nordic area; one consisting of Denmark and Norway and the other consisting of Sweden and Finland. As a result of the Swedish involvement in the war with Napoleon, Finland was occupied by Russia in 1809. Shortly thereafter, however, Sweden compensated for the loss of Finland by seizing Norway from Denmark. This resulted in a—fairly weak—union which lasted until 1905.

With this background it is natural that the co-operation between the Nordic states in different areas is quite intensive.

The purpose of this essay is to describe the Nordic co-operation in criminal matters in a systematic way. It should be emphasized that the essay is written from a Swedish perspective, *i.e.*, the corresponding rules in the other Nordic states may differ in certain respects. (I do, however, very occasionally refer to the laws of the other Nordic states.)

Since the area at least to some extent has an international law background, I would also, from the very beginning, like to underline the fact that Sweden traditionally has a dualistic approach to the relation be-

* I would like to thank Iain Cameron, Nils Jareborg, Peter Lundkvist, Lena Moore and Bo Skarinder for help in various forms. Any errors remaining are my own.

tween international law and domestic law, *i.e.*, conventions have—in principle—to be converted to national law before they can be applied by Swedish courts or authorities. This does not, however, exclude the possibility that the interpretation of Swedish rules to some extent can be affected even by non-converted conventions, *i.e.*, Swedish judges will probably generally try to interpret Swedish rules in a way that is consistent with non-converted international commitments.

1.2 Special provisions in the Criminal Code

The Swedish Criminal Code (hereafter CC) was adopted in 1962 and came into force in 1965. The CC contains thirty eight chapters of which twenty contain special penal provisions (Chapters 3–22) and three contain general rules on criminal liability (Chapters 1 and 23–24). Further, there are fourteen chapters which contain rules regarding imprisonment, fines and other types of criminal sanctions (Chapters 25–38) and, finally, one chapter on jurisdiction (Chapter 2).

In the CC one can find only three provisions where the Nordic states are treated differently than other foreign states. The first two of those rules are found in the Chapter on jurisdiction (*i.e.* Chapter 2).

First, Swedish jurisdiction is broader with regard to Nordic citizens than with regard to other aliens. In Chapter 2 section 1 it is stated that Sweden has jurisdiction with regard to crimes which are committed within the country. Sweden has also, according to Chapter 2 section 2 of the CC, jurisdiction with regard to crimes committed by:[1]

(1) a Swedish citizen or by an alien who is domiciled in Sweden (according to this section it is the status of the person at the time of the crime which is relevant).

(2) (a) an alien not domiciled in Sweden if, after the crime, he has become a Swedish citizen or has acquired domicile in Sweden or (b) is a citizen of another Nordic state and is present in Sweden.[2]

[1] It should be mentioned that jurisdiction according to Chapter 2 section 2 presupposes double criminality, *i.e.* that the crime in question is punishable also in the state in which the crime was committed, and also that the principle of lex mitior is applied.

[2] The letters (a) and (b) are not official, but used here to separate the different parts of the section.

(3) another alien who is present in the country if the crime is punishable by imprisonment of more than six months.

Thus, according to this section Sweden has jurisdiction over crimes committed by aliens who are present in the country, if the crime, according to Swedish law, is punishable by imprisonment of more than six months (p. 3). The difference with regard to Nordic perpetrators is that there is no requirement regarding the seriousness of the crime (p. 2 (b)).[3]

This extended competence is, however, not very important in practice, since crimes which are not punishable by imprisonment of more than six months, if they are committed abroad, are seldom crimes against Swedish law. The most important exception to this concerns minor traffic offences which, according to sections 1–3 in the *Act (1971:965) on Traffic Offences which are Committed Abroad*,[4] to a large extent are to be considered as crimes against Swedish law even if they are committed abroad.

The general purpose of the special rule on Nordic citizens is, according to what the Minister of Justice wrote in the Bill to Parliament, to facilitate execution of sentences in other states than the one in which the sentence was passed and to increase the possibilities for mutual assistance.

Second, even if Sweden has jurisdiction over a crime committed abroad, prosecution normally presupposes a decision by the Prosecutor General. One of the exceptions to this rule is, however, that the crime is committed in one of the Nordic states *or* on an aircraft or a vessel in regular traffic between areas in the Nordic states *or* is committed by a Nordic citizen against a Swedish interest; Chapter 2, section 5, para. 2, points 4 and 5 of the CC.

Neither of these two rules on jurisdiction is founded on a treaty, but they are instead due to a general Nordic aspiration to put other Nordic citizens on the same footing as nationals. The special jurisdictional rules concerning Nordic citizens have also connection to the fact that Sweden refuses to extradite nationals of other Nordic states to non-Nordic states (*cf.* the principle *aut dedere aut judicare*).

Third, there is one section which gives the Nordic states a special position when it comes to the special penal provisions. Perjury, Chapter 15 section 1 of the CC, is normally considered to be a crime against Swedish law only when committed before a Swedish court. In Chapter

[3] See section 7 in the Danish CC and section 5 in the Icelandic CC. *Cf.* also section 12 of the Norwegian CC and Chapter 1 of the Finnish CC.

[4] See below in section 3.4.

15 section 4a of the CC, however, the crime of perjury is extended to cover perjury also before Nordic courts. (There is a similar section in Chapter 15 section 4b of the CC which concerns perjury before the European Court of Justice.) The rule in section 4a was passed in connection with the *Act (1974:752) on Inter-Nordic Duty to Appear as a Witness* (see below in section 4).

According to that Act Nordic citizens have, under certain circumstances, a duty to give evidence as a witness in the other Nordic states. This duty would, it was argued, be less valuable, if the witness, in cases of perjury, could not easily be prosecuted in the state where he ordinarily lives. Thus, Nordic states whose offences on perjury did not cover perjury committed before foreign courts were invited to extend the scope of their offences in this regard.

2 Extradition

2.1 General background

The Swedish rules on extradition can mainly be found in the two acts on extradition. First, there is one general *Act (1957:668) on Extradition* which is founded on the European Convention on Extradition of the 13th December 1957 (hereafter the General Act). Second, there is a special *Act (1959:254) on Extradition for Crimes to Denmark, Finland, Iceland and Norway* (hereafter the Nordic Act).[5]

The Nordic Act is not founded on a convention. It is instead the result of Nordic deliberations during the 1950s, which finally led to a decision with the implication that the Nordic states should enact identical, or at least similar, laws regarding inter-Nordic extradition. The underlying aim of the co-operation is to combine the need for simplicity with the need for legal certainty.

One can generally say that the need for simplicity is satisfied by using two methods: (1) by minimizing the requirements for extradition and (2) by using a simplified procedure. The minimized requirements and the simplified procedure have—due to the confidence that exists between the Nordic states—been considered to be acceptable from the viewpoint of legal certainty.

According to the *travaux préparatoires*, the Nordic Act is meant to be applicable only in "normal circumstances". Thus, in politically unsettled times the General Act should be applied instead. This is, however, not prescribed in the Nordic Act or in any other legislation, which means that it is a task for Parliament to decide, by legislation, when the Nordic Act should be declared invalid. (*Cf.* section 27 of the General Act which states that the General Act shall not apply in relation to Nordic states if there exists a special Act in that regard.)

[5] The other Nordic states also have, in a similar way, one General Act and one Nordic Act on extradition.

It should be emphasized that the preconditions which are stated in the Acts on extradition only have the character of necessary conditions for granting extradition. Thus, even if the conditions prescribed are fulfilled the Swedish authorities have a margin of discretion which can be used to refuse extradition in cases where special circumstances exist. This is expressed in the Acts by the use of the word "may" ("extradition may be granted"). With regard to the Nordic Act the Minister of Justice stated, in the Bill to Parliament, that a request which fulfils the requirements of the Act generally should be granted and that the margin of discretion should be used with great restraint.

As examples of cases where it might be justified to refuse extradition the Minister mentioned cases where the offence for which extradition is requested is not criminalized according to Swedish law and cases where it does not appear to be very important that the offence is brought before a court in the requesting state.

The general condition for granting extradition under the Nordic Act is that the person for whom extradition is requested is suspected, prosecuted or sentenced for an offence in the requesting state. Extradition may also be granted if the person in question is sentenced in another Nordic state (than Sweden or the requesting state) and the sentence, according to a separate decision, is to be executed in the requesting state. It is, however, not possible to extradite a person on the ground of a Swedish sentence which is to be executed in the requesting state. (See section 1 of the Nordic Act.)

2.2 Major differences in relation to the General Act

2.2.1 The requirement of double criminality etc.

One of the most interesting differences between the Nordic Act and the General Act is that according to the Nordic Act there is no general requirement of double criminality. Even if the deed for which extradition is requested is not criminalized in Sweden—or if it is criminalized but prosecution is barred by the statutes of limitation—extradition can be granted on the condition that the deed is criminalized in the requesting Nordic state.

The reasons given for not having a requirement of double criminality were partly the confidence that the Nordic states have in each others' legal systems and partly considerations of efficiency.

When the Nordic Act was proposed in 1955 several of the authorities to which the proposal was referred to for consideration criticized the fact that extradition would become possible even for an act which was not criminal according to Swedish law. The Minister of Justice stated, however, that there were only minor differences between the penal codes of the Nordic states. Consequently there was no pressing need for a requirement of double criminality. Further, the Minister of Justice continued, the Swedish authorities could—if it would become necessary to avoid offensive results—use the above-mentioned scope for discretion in order to refuse extradition.

The lack of a double criminality requirement has also been questioned in the literature. It has, *inter alia*, been argued that the requirement of double criminality is, if not directly, at least closely connected to the principle of legality and that it therefore is important that the requirement is upheld. In other words one can argue that extradition is a measure under criminal law which should be taken only in relation to acts which are criminalized by the law in the state that takes the measure in question. It has also been argued that the requirement of double criminality is especially appropriate when the social conditions in the states involved are similar (and this is obviously the case with regard to the Nordic states).

According to section 4 of the General Act extradition cannot be granted unless the crime, according to the *Swedish* penalty scale, is punishable by imprisonment of more than one year. In relation to Nordic states the requirements are lower: extradition only presupposes that the crime, according to the penalty scale in the *requesting state*, is punishable by more than a fine. The fact that it is the penalty scale in the requesting state, and not in Sweden, that is of relevance in Nordic matters is, of course, a consequence of the abandonment of the requirement of double criminality.

If the request concerns a person who, at the time of the request, has already been sentenced in the requesting state, according to the Nordic Act, it is required that the penalty prescribed is imprisonment or some other form of supervision in an institution. This criterion is fulfilled also in cases where a suspended sentence is converted into imprisonment or where a conditional release is forfeited. This means that the decision, on which the request for extradition is founded, does not necessarily need to be taken by a court.

2.2.2 Military and political offences

Further, according to the Nordic Act, extradition can also be granted when the crime is a military offence. According to section 5 of the General Act, this is not possible in other cases.

There are also major differences between the General Act and the Nordic Act in relation to political offences. According to section 6 of the General Act it is not possible to extradite a person solely on the ground of a political offence. Extradition can, however, be granted if the crime includes an element of non-political character and the crime, in the concrete case, can be considered to be of mainly non-political character. Under the Nordic Act extradition is, as a principal rule, possible but on the condition of double criminality. The only exception is that Swedish citizens may not, at all, be extradited for political offences.

Further, in the General Act there is a section (section 7) which states that extradition may not be granted if there is a risk that the person extradited, due to *e.g.* his origin or his political or religious beliefs, will be subject to persecution directed against his life or his freedom. This impediment for extradition has no counterpart in the Nordic Act.

This divergence can probably be explained by the fact that the Nordic Act is meant to be applicable only in normal political circumstances, *i.e.* in situations where persecution will not be an issue. If a situation would arise where there is risk for persecution it is presupposed that the Swedish authorities shall make use of their margin of discretion and refuse to extradite the person in question.

2.2.3 Extradition of Swedish citizens

Extradition of Swedish citizens is according to the General Act not possible; see section 2. In relation to the Nordic states, however, extradition of Swedish citizens is possible if certain conditions are fulfilled; see section 2 of the Nordic Act.

First, extradition of a Swedish citizen is possible if he, at the time of the commission of the offence, for at least two years, has been residing in the requesting state. In order to determine whether a person has been residing in the requesting state his domicile, work and family conditions are of great importance. The purpose of the requirement concerning the domicile of the person in question is to make sure that extradition is granted only in cases where the person has fairly close connections, and at least some feeling of affinity, to the requesting state.

In the Supreme Court-case NJA 1978 s. 476 a person had committed a crime in Finland during his military service in 1974. Four years later Finland wanted him extradited. It was found that the man had become a Swedish citizen in 1976 and that he, with the exception of his military service in Finland in the years 1973 and 1974, had lived in Sweden from 1970 to 1978. Extradition was not granted.

Second, Swedish citizens may be extradited to one of the Nordic states if the crime for which extradition is requested corresponds to a crime which according to Swedish law is punishable by imprisonment for more than four years. If, however, such a crime is committed exclusively in Sweden (*cf.* Chapter 2 section 4 CC where it is made clear that a crime can be considered to be committed in several places) extradition can not be granted except where the act also constitutes complicity in relation to a crime which has been committed abroad (or, of course, if extradition is granted for another crime which fulfils the above-mentioned criteria). In the deliberations in the 1950s it was presupposed that each state could itself determine which level of seriousness that would be required in order to extradite its own nationals.

Swedish citizens may, however, according to section 4, never be extradited if the crime for which extradition is requested is a political crime.

2.2.4 The principle of speciality

Within the Nordic Act the principle of speciality—*i.e.* the principle that the requesting state can prosecute the extradited person for crimes which he has committed before the application only if they are included in the application—is applicable only with regard to Swedish citizens. Irrespective of the nationality of the offender the principle is applied to political offences. See section 7 para. 2 and 3.

This construction, *i.e.*, that the principle of speciality is applied mainly in cases where there is a requirement of double criminality, is quite natural since the principle of speciality may be seen as an extension of the principle of double criminality. Thus, in the General Act the principle of speciality is generally applied, *cf.* section 12 para. 1.

The fact that the principle of speciality is not applied in cases where non-Swedish citizens are extradited for non-political offences, makes it quite easy to fulfil the requirements for granting extradition.

2.2.5 Procedure etc.

Section 9 in the Nordic Act regulates the simplified procedure which is applicable in relation to requests from Nordic states. According to the General Act the normal procedure is that the request shall be sent through the diplomatic channels, but in Nordic matters the police or the prosecutor in the requesting state can get in touch with the responsible prosecution authority in Sweden or, if the authority in the requesting state does not know where the offender is, with the Prosecutor General.

When a Swedish prosecutor has received a request concerning extradition he shall, according to section 10 of the Nordic Act, promptly perform the necessary investigations in accordance with the rules applicable to investigations of criminal offences. These rules are mainly found in the Swedish Code of Judicial Procedure (Rättegångsbalken).

In a matter concerning extradition the Swedish prosecutor may, according to section 12 in the Nordic Act, use certain coercive measures (*e.g.* arrest, detention, telephone tapping) in accordance with the general rules applicable to investigations of criminal offences. In section 12 it is stated that coercive measures may be used in order to promote the investigation and in order to make sure that the extradition can be fulfilled (*i.e.* to secure that the person does not run away). These purposes are the only relevant purposes when it comes to the use of coercive measures in an extradition matter. This means, *inter alia*, that it is highly questionable if one can arrest a person who is to be extradited in order to prevent him from committing further crimes (which according to the Swedish Code of Judicial Procedure is normally a ground for arrest).

The Nordic Act does not prescribe what the prosecutor shall do if the request for extradition does not contain the information which is needed in order to consider the request. In the literature it has been suggested that, in such cases, the Swedish prosecutor should get in direct contact with the requesting authority in the other Nordic state and ask for the material that is needed. This seems to be a practical solution and it is also consistent with the general purpose of the Act.

Decisions regarding extradition can, according to section 15 in the Nordic Act, be made either by the local prosecutor, the Prosecutor General or the Government. Neither the local prosecutor nor the Prosecutor General has, however, competence to refuse a request for extradition. Thus, in all cases where the local prosecutor or the Prosecutor General finds that the request should be refused the matter finally ends up with the Government.

The local prosecutor may grant extradition only if the person in question gives his consent. But the fact that the person consents is only a factor

authorizing the prosecutor to take the decision. The prosecutor must accordingly also in these cases make a full investigation in order to make sure that there are no impediments for granting extradition. The Prosecutor General, in turn, is competent to make the decision in cases where it is obvious that the application shall be granted. In other circumstances the Prosecutor General submits a statement to the Government which thereafter makes the decision. The Government can also require a statement from the Supreme Court. (The Supreme Court has then the option to hold a hearing and, if it finds impediments to the extradition, it can state that the request may not be granted.)

The role of the Supreme Court under the Nordic Act is, in comparison with its role under the General Act, very limited. When it comes to the General Act it is often emphasized that it is important that the decision is made by an authority in an independent position. Otherwise, it is argued, political pressure used by the requesting state may influence the decision. One can, of course, discuss if this independent position is not even more important when it comes to requests from the Nordic states (which as a result of their close relationship with Sweden expect to get their requests granted).

The request shall, as a principal rule, be founded either on a sentence (which must include some form of custodial penalty) or on a decision by a court from which it is evident that the court has found probable cause for suspecting the person of having committed the offence for which extradition is requested. In relation to Nordic requests, no independent judgement of the guilt of the offender in question is, or even can be, made by the Swedish authorities. This may be done in relation to requests from other states.

In cases where the person in question consents to be extradited or confesses that he has committed the offence for which extradition is requested, it is, however, not necessary to enclose documentation relating to a sentence or any other decision concerning the offence; see section 9 of the Nordic Act.

2.3 Ordinance (1982:306) with Certain Rules on Extradition to Sweden

Ordinance (1982:306) with Certain Rules on Extradition to Sweden is the main ordinance when it comes to extradition from another state to Sweden. The Ordinance contains mainly procedural rules stating, *inter*

alia, which Swedish authorities that may make a request for extradition, which documents that should be enclosed etc.

The first five sections (sections 1–5) of the Ordinance concern extradition from a non-Nordic state to Sweden. A request for extradition is—if it concerns extradition of a person who is suspected of having committed a crime—made by the prosecutor. The request shall be sent to the Prosecutor General who, in turn, will decide whether it should be sent to the state in question. Documents shall be enclosed which make it clear that a court has found probable cause for suspecting the requested person of having committed the offence in question and which shall also contain certain information about the offence and the offender.

If the request concerns extradition for execution of a sentence of imprisonment the request is instead made by the National Prisons and Probation Administration.

All requests are sent through diplomatic channels by the Ministry for Foreign Affairs, unless there is a special agreement with the state involved laying down another procedure.

The next three sections (sections 6–8) concerns requests for extradition from a Nordic state. According to the Ordinance, such requests are made by the police or prosecution authority that is in charge of the preliminary investigation. Even requests concerning enforcement of sentences on imprisonment are, on request by the National Prisons and Probation Administration, made by these authorities. Documents as described above do not need to be enclosed if it can be presumed that the person in question will give his consent to the extradition or, in relation to Denmark, if the person in question confesses that he has committed the offence for which extradition is requested.

The Ordinance is concluded by a general section which states that extradition should be requested only when—paying due regard to the inconvenience which may be caused to the person in question and the costs—it is justified with regard to the seriousness or the special nature of the offence and other circumstances.

3 Transfer of proceedings

3.1 Introduction

In the area of transfer of proceedings there exists a special Nordic Agreement of 1970. It was revised in 1979 and is still in force. The Agreement is published as circular C65 by the Swedish Prosecutor General.

Beside this agreement, the European Convention on the Transfer of proceedings in Criminal Matters is in force between Sweden, Denmark and Norway. (Apart for these three Nordic states there are nine other states which have ratified the convention: Austria, Turkey, the Netherlands, Spain, Czech Republic, Slovakia, Ukraine, Estonia and Latvia.)

3.2 The Nordic Agreement

The Nordic Agreement on transfer of proceedings has its origin in the informal co-operation which, especially in the period between 1945 and 1965, was conducted between authorities in the Nordic states. During this time it was fairly common that police or prosecution authorities in one Nordic state asked the prosecution authorities in another Nordic state to initiate proceedings against persons who had committed crimes in the requesting state. There were, however, no rules or principles which governed this co-operation.

As a result of this the Prosecutor Generals of the Nordic states met and discussed this matter on several occasions during the late 1960s, with the aim of improving both efficiency and legal certainty. These discussions resulted in the Nordic Agreement of 1970.

The Nordic Agreement does not have the character of a binding treaty. The Agreement does, of course, presuppose some form of mutuality in application, and it is further tacitly understood that requests

which fulfil the criteria given shall generally be granted. But the Agreement does not impose any obligations under international law on the states involved.

Since the Agreement was meant as a formalization of an already existing practice it was built in a way which makes it applicable solely on the ground of already existing legislation, *i.e.*, the Agreement does not presuppose any implementation measures. Thus, a request which is founded on the Agreement is most appropriately described as a request to the effect that the requested state shall simply use its existing laws in relation to a certain case. For example, the Agreement presupposes, in order to work, that the crime for which transfer of proceedings is requested constitutes a crime according to the law of the requested state and that the requested state has jurisdiction with regard to this crime.

The Agreement is in Sweden applied in relation to Finland and Iceland. In relation to the other Nordic states, Denmark and Norway—which both have ratified the European Convention on Transfer of Proceedings—the *Act (1976:19) on International Co-operation on Transfer of Proceedings* is applicable instead (see section 3.3 below).

According to section 1 of the Nordic Agreement transfer of proceedings to another state than that in which the crime was committed is possible:

(1) if the suspected offender is domiciled in the first-mentioned state *and* the deed is punishable there, *or*

(2) if the suspected offender is presently staying in that state *and*, for special reasons, it is considered appropriate that the proceedings take place in that state *and* the authorities of that state have jurisdiction which regard to the offence.

It is not very easy to understand why transfer of proceedings according to para. (2) does not presuppose double criminality. Is not the requirement of double criminality even more important if the suspect is not domiciled, but only staying in the requested state? Further, the requirement of jurisdiction, which is mentioned only in para. (2), is in practice also a requirement according to para. (1), since the Agreement does not, in itself, confer any jurisdiction on the requested state.

Transfer of proceedings according to the Agreement does not, however, presuppose that the suspected offender is a Nordic citizen or even that he is domiciled in one of the Nordic states.

Since the Agreement does not in any way alter the scope of the penal provisions of the requested state it is necessary that the penal provisions

of that state are directly applicable in relation to the offence in question. It is, *e.g.*, not possible to transfer proceedings from Finland to Sweden if the request concerns a Finnish civil servant who has committed breach of duty, since the Swedish section on breach of duty (CC 20:1) is generally applicable only in relation to measures taken by Swedish civil servants. Further, if the request concerns assault against a Finnish civil servant, transfer of proceedings is possible, but the Swedish court can only use the general section on assault (CC 3:5), since the qualified crime of assault against civil servants (CC 17:1) is normally[6] applicable only in relation to violence directed against Swedish civil servants.[7]

Section 2 prescribes that when deciding whether a request shall be granted or not, regard shall be paid to the interests of the suspect as well as to considerations of efficiency.

The same section further explicitly states that a request should not normally be refused if extradition to the requesting state is legally or practically impossible or if the suspect will be prosecuted for another crime in the requested state and it is appropriate that the cases are considered together.

On the other hand, a request should be refused if it can be assumed that there will be problems related to the collection of evidence or that, due to other circumstances, it would be costly or otherwise inconvenient to initiate proceedings in accordance with the request.

Generally, one can also say that the ability of the suspect to understand the language in the requested state and the possibility of obtaining legal assistance in his native language (or in another language which he masters) are important factors when deciding whether a request shall be granted or not.

In section 3 it is prescribed that a request concerning transfer of proceedings shall be made as soon as possible. Transfer of proceedings can, under any circumstances, be granted only as long as no judgement concerning the offence in question has been passed in the state where the crime was committed.

Section 4 contains rules regarding the request. It shall be written in Danish, Norwegian or Swedish and it must, naturally, contain certain information regarding the offence and the suspect. Further, in section 5, it is prescribed which authorities that may make a request and to which authorities the request shall be sent. In this regard there are some differences between the countries with regard to the degree of decentraliza-

[6] See section 17:5 of the CC which implies that foreign civil servants is put on the same footing as Swedish if this is prescribed by law.

[7] See Cameron 1993 p. 83 f for an illustrative (but old) Danish example.

tion. For example in Sweden, the request shall be sent to the local prosecution authority, but in Iceland it shall be sent to the Prosecutor General.

According to section 6, the authorities in the state where the crime was committed shall inform the authorities in the requested state of any procedural measure taken in relation to the crime. The responsible authority in the requested state shall, in turn, promptly give an answer to the authorities in the requesting state. It is also explicitly stated that a commitment to initiate proceedings may be withdrawn if the conditions change.

In section 7 it is stated that if a prosecution authority finds that there are reasons to initiate proceedings with regard to an offence which has been committed in another Nordic state, it shall inform the authorities in that state. This means in practice that the authorities in the first-mentioned state (*e.g.* Sweden) call the attention of the authorities in the state where the crime was committed (*e.g.* Finland) to the fact that it would be appropriate to request transfer of proceedings (from Finland to Sweden).

Finally, there is, in section 8, a rule which may be considered as typical for the informal character of the co-operation. According to section 8, the authorities which are to apply the Nordic Agreement shall simply try to solve any complications "in a flexible way in consultation with each other".

3.3 The European Convention on Transfer of Proceedings

In relation to Denmark and Norway the *Act (1976:19) on International Co-operation on Transfer of Proceedings* is applicable instead of the Nordic Agreement. This is due to the fact that Denmark and Norway have ratified the European Convention on Transfer of Proceedings, a fact which according to section 1 of the Act is a necessary condition for making the Act applicable in relation to the state in question. The Act is supplemented by an *Ordinance (1978:108) on International Co-operation on Transfer of Proceedings* which mainly contains procedural rules.

It should be mentioned that if a request fulfils the criteria of the Convention, Sweden has an obligation under international law to grant it. This is, of course, a very important difference in comparison with the Nordic Agreement.

According to sections 2 and 6 of the Act proceedings may be transferred to or from Sweden (conditions which are put within brackets are applicable in relation to transfers from another state to Sweden):

(1) if the suspect is domiciled in the other state (or in Sweden),

(2) if the suspect is a citizen in the state in question (or in Sweden) or if this state is his native country,

(3) if the suspect serves or shall serve a custodial sentence in the other state (or in Sweden),

(4) if proceedings are initiated against the suspect for the same or another offence in the other state (or in Sweden),

(5) if transfer of the proceedings is essential for reasons of investigation,

(6) if enforcement of the sentence in the other state can be assumed to increase the possibilities to adjust the sentenced person socially,

(7) if presence of the suspect can not be guaranteed in Sweden but in the other state (or contrariwise), or

(8) if it will not be possible, even by the means of extradition, to enforce a sentence regarding the crime in Sweden, but the sentence can be enforced in the other state (or contrariwise).

Transfer of proceedings from another state to Sweden does not, as within the framework of the Nordic Agreement, presuppose that the offence in question actually constitutes an offence according to Swedish law, but merely that the deed *would have* constituted an offence in Sweden *if* it had been committed in Sweden, against a corresponding interest etc. See section 6 of the Act on Transfer of Proceedings.

Thus, if a Danish civil servant has committed breach of duty, transfer of proceedings is possible, since the deed in question would constitute an offence in Sweden if it had been committed by a Swedish civil servant. Further, this construction makes it possible to use the Swedish section on assault against civil servants (and not only the general section on assault) if proceedings for assault against a Danish civil servant are transferred. This is, as has been stated above, not possible if the Nordic Agreement is used.

Another difference in comparison with the Nordic Agreement is that the Act on Transfer of Proceedings can broaden the jurisdiction of the Swedish courts. If proceedings, in accordance with the rules of the Act, are transferred from another state to Sweden this will automatically give Swedish courts jurisdiction with regard to the offence in question. This is explicitly stated in Chapter 2 section 3a of the Swedish CC. Transfer of proceedings according to the Nordic Agreement does not—as has been emphasized above—confer, but instead presupposes, jurisdiction.

The fact that the Act on Transfer of Proceedings can broaden Swedish criminal jurisdiction is, however, not very important in practice. It is probably very rare that Sweden does not have jurisdiction according to the ordinary rules in Chapter 2 of the CC, in cases where proceedings are transferred.

The above-mentioned rules are, however, applicable to all the states in relation to which the Act is applicable (*i.e.*, states who have ratified the European Convention on Transfer of Proceedings). The only provision in the Act and the Ordinance which is applicable solely in relation to the Nordic states (*i.e.* Denmark and Norway) is section 22 of the Ordinance. Section 22 prescribes that in relation to Nordic states a simplified procedure shall be used. Generally, matters concerning inter-Nordic transfer of proceedings shall be dealt with by the local prosecutor who has competence to initiate proceedings with regard to the crime in question. When dealing with these matters the local prosecutor may take the measures which in relation to non-Nordic states, according to the Ordinance, shall be taken by the Prosecutor General. If the prosecutor finds reasons to refuse a request he shall, however, submit a statement and leave the matter to the Prosecutor General.

In this connection it should be mentioned that, with regard to procedure, the Nordic Agreement is used as a supplementary framework.

3.4 Act (1971:965) on Punishment for Traffic Offences Committed Abroad

The *Act (1971:965) on Punishment for Traffic Offences Committed Abroad* is also an Act which was enacted in order to facilitate transfer of proceedings from another state to Sweden. The Act is in relation to non-Nordic states founded on the European Convention on the Punishment of Road Traffic Offences (which was agreed on in Strasbourg 1964).

The Nordic states made, however, a reservation in accordance with Article 27 of the Convention, stating that between the Nordic states the

Convention shall not apply. In inter-Nordic relations the co-operation is instead governed by the above-mentioned Nordic Agreement and by the general rules on transfer of proceedings.

There is no section in the Act which explicitly deals with transfer of proceedings. The rules in the Act, in fact, only prescribe that certain penal provisions concerning traffic offences—which are normally considered to be applicable only to offences committed in Sweden—shall apply also to acts committed abroad. The rules which govern procedure etc. are instead to be found in the Convention, or in relation to Nordic states, in the Nordic Agreement.

The first two sections of the Act are generally applicable and state that the Swedish penal provisions concerning, *inter alia*, drunken driving and careless driving shall also be applied in relation to acts committed abroad.

In section 3 we find a quite peculiar rule which states that if someone has infringed certain traffic rules in Denmark, Finland, Iceland or Norway, and if punishment can not be imposed according to sections 1 or 2, he shall be punished by a fine. This section is, according to section 4 and Ordinance (1972:477), also applicable in relation to states which have ratified the above-mentioned Convention. As can be seen, this section does, actually, criminalize infringements of foreign rules (a construction which due to the links between criminal law and sovereignty is very rare).

4 Mutual legal assistance

4.1 General

The rules on mutual legal assistance in Swedish law are to be found in several different Acts and Ordinances. In the following sections I will describe the most important ones. Besides these forms of assistance one can, *e.g.*, find rules on exchange of information and inquests made at the request of foreign states in the *Act (1991:435) on International Co-operation in Criminal Matters*. I will, however, not pay attention to those rules since they do not grant a special position to the Nordic states.

4.2 Service of summons and collection of evidence

In the area of service of summons and collection of evidence there is an Agreement on Mutual Assistance between the Nordic states. It consists of five articles which regulate the procedure when a Nordic state needs assistance concerning service of summons or collection of evidence (hereafter assistance). The Agreement involves only certain fairly limited deviations from the European Convention on Mutual Assistance in Criminal Matters and presupposes that the Nordic co-operation shall be governed also by the Convention.

According to article 1 of the Agreement a request for assistance can be made through direct exchange of notes between the authorities involved. The request itself, and all papers enclosed, shall be written in Danish, Norwegian or Swedish or be accompanied by a certified translation into one of these languages. In Circular (1995:419) regarding Mutual Assistance between Sweden, Denmark, Finland, Iceland and Norway it is prescribed to which authorities the request shall be sent.

The documents do not need to be translated if the request concerns service of summons and the person who is to be served voluntarily accepts it. If it is justifiable from the viewpoint of legal certainty the authorities may grant a request which is not accompanied by a translation even in other cases. One example of this is where the person to be served obviously understands the language used.

Protocols and other documents concerning a collection of evidence which has been performed can, according to article 3, be written in the language used in the state where the measure is taken. If the documents are written in another language than Danish, Norwegian or Swedish, they must, however, if demanded by the requesting state, be translated into one of these languages.

The reason for having Danish, Norwegian and Swedish as working languages is, of course, that these languages, at least in written form, are commonly understood by Nordic citizens. It is very rare that people who are not Finnish or Icelandic understand Finnish or Icelandic.

According to article 4 the costs for the assistance shall fall on the state in which the measure is taken. There are, however, two exceptions to this rule. First, if a request for mutual assistance or a request for translation according to article 3 has caused considerable costs due to a translation to or from one of the working languages (Danish, Norwegian or Swedish) those costs may be reclaimed from the requesting state. Second, costs for other types of expert evidence than blood tests can also be reclaimed.

In article 5 there are rules concerning the procedure of ratification and the entry into force of the Agreement. Further, it is stated that the Agreement can be revoked by any state on the condition that it gives six months notice.

The general legislation concerning service of summons and collection of evidence is contained in *Ordinance (1909:24 s. 1) Concerning Service of Documents on Request by Foreign Authorities* and in the *Act (1946:816) on Collection of Evidence for Foreign Courts*. The latter Act is also accompanied by an *Ordinance (1947:848) with Special Rules regarding Collection of Evidence for Courts in Certain Foreign States*.

The differences between the rules which are applicable to the Nordic states and the rules which are generally applicable mainly concern the procedure. Nordic authorities can turn directly to the local Swedish authority while authorities of other states must use diplomatic channels.

4.3 Act (1974:752) on Inter-Nordic Duty to Appear as a Witness

Normally the duty to appear as a witness in Sweden applies only to Swedish citizens and citizens in other states that happen to be staying in Sweden. Thus, foreign citizens do not ordinarily have a duty to appear before Swedish courts if they are not already present in Sweden. In the *Act (1974:752) on Inter-Nordic Duty to Appear as a Witness*, however, a duty for Nordic citizens to appear as a witness in Sweden and a duty for Swedish citizens to appear as a witness in the other Nordic states are prescribed.[8] The Act is applicable only in relation to Denmark, Finland and Norway; see Ordinance (1975:297).

In section 1 it is stated that anyone who is domiciled in Denmark, Finland or Norway and who is at least 18 years old, can be summoned by Swedish courts to be heard as a witness or as the injured party in criminal trials on the condition that he, at the time of the summons, resides in one of the states mentioned. The concept of domicile is, according to the *travaux préparatoires*, in this connection to be interpreted in a rather extensive way.

A summons may, according to section 2, be issued only if the statement will probably have considerable impact on the judgement in question and if it is of essential significance that the inquest takes place before a Swedish court. When judging whether the witness shall be summoned, the importance of the case and the inconvenience which may be caused to the witness shall be considered. Generally one can say that the Act shall not be made use of in cases concerning offences which are punishable only by a fine.

According to section 3 the Court issues the summons. In the summons the minimum time period which the witness must be given before he has to appear before the Court, shall be stated. This is important since sanctions for non-appearances cannot be imposed if the summons is communicated so late that the witness can not utilize the minimum time stated.

The inquest is, according to section 4, to be carried out in accordance with the rules in Chapter 36 sections 3–6 of the Swedish Code of Judicial Procedure. These rules state, *inter alia*, that relatives do not have to testify on oath and that people who work under an obligation to observe silence do not have to testify about facts which are covered by the obligation. The inquest is moreover to be carried out in accordance with

[8] The other Nordic states also have special Acts on an inter-Nordic duty to give evidence as a witness.

the corresponding rules in the state where the witness is domiciled. Thus, the courts are, *ex officio*, obliged to take the rules of the state in which the witness is domiciled into consideration. In order to make this work in practice it is necessary both that the states involved continuously keep each other informed of the applicable rules and that the courts are very observant.

The duty to present certain written evidence before the court is in a similar way regulated both by Chapter 38 section 2 of the Swedish Code of Judicial Procedure and by the corresponding rules in the country of domicile; see section 5 of the Act. The rules in Chapter 38 section 5 of the Swedish Code of Procedure on assistance by the enforcement service with regard to written evidence are, however, applicable only in relation to evidence which is situated within Sweden.

In section 6 it is stated that the witness shall be compensated for his costs (including compensation for travel expenses, subsistence and loss of time).

According to section 7 the witness may not, during his stay in Sweden, be prosecuted, punished or extradited to another state than the one in which he is domiciled for crimes which he has committed before his arrival in Sweden. Even if it does not follow from the wording, section 7 also implies a prohibition on arresting the witness or on taking him into custody. These rules are not applicable if the witness gives his consent to the measure in question or if he voluntarily stays in Sweden for more than 15 days after the inquest.

Section 9 expresses the duty for people domiciled in Sweden (and who are present in the country or in any of the other Nordic countries) to appear before courts in the other Nordic states. Further, this duty is extended to people who are domiciled in one of the Nordic states but present in Sweden.

This Act has no counterpart in relation to other states than the Nordic states. Perhaps one can say that this type of co-operation presupposes that the participating states are situated very near each other.

4.4 Act (1975:295) on the Use of Certain Coercive Measures upon Request by a Foreign State

The *Act (1975:295) on the Use of Certain Coercive Measures upon Request by a Foreign State* contains general rules on the use of seizure,

sequestration and searches on account of the fact that someone, in a foreign state, is suspected, prosecuted or sentenced for an offence.

It should be observed that this Act, in the same way as the Acts on extradition, gives the Swedish authorities a margin of discretion. Thus, even if the conditions prescribed are fulfilled Sweden may refuse to give assistance.

The Act contains three parts. First, a part with general conditions for the use of coercive measures, second, a part with procedural rules concerning requests from non-Nordic states and, third, a part with procedural rules concerning requests by Nordic states.

Thus, the general conditions for the use of the measures are mainly general, *i.e.*, applicable to both Nordic and non-Nordic requests. Some of the conditions are, however, connected to the Acts on extradition, and, as has been shown above, the rules on extradition in relation to Nordic states are not the same as those in relation to other states. Consequently, the rules on assistance regarding coercive measures are a bit different too. *Inter alia*, it is stated that seizure of property may not be performed if extradition would not be allowed due to certain impediments. And since the General and Nordic Acts on extradition do not prescribe the same impediments (*e.g.*, lack of double criminality is an impediment according to the General Act on extradition but not according to the Nordic Act) this has consequences for the use of the Act on coercive measures.

The major differences, however, are those related to procedure. A request from one of the Nordic states can be made by the police authority or by the public prosecution authority and it shall be addressed to the Swedish Prosecutor General, or if it is known where the property in question is situated, to the local prosecutor; see section 10. The prosecutor to whom the request is addressed is also the one who will decide in the matter.

Requests from other states shall be sent through diplomatic channels to the Swedish Ministry for Foreign Affairs; section 5. The Government may take a decision if it is obvious that the request shall be rejected, but in other cases it shall be sent to the Prosecutor General who will decide in the matter.

5 Enforcement

5.1 General

There are, as in the area of extradition, two Swedish acts which regulate co-operation in the area of enforcement of punishment. First there is an *Act (1972:260) on International Co-operation Concerning Enforcement of Punishment* (hereafter the General Act) and second, there is an *Act (1963:193) on Co-operation with Denmark, Finland, Iceland and Norway Concerning Enforcement of Punishment etcetera* (hereafter the Nordic Act).[9]

In this area the differences between the rules applicable in relation to the Nordic states and the rules applicable in relation to other states are very apparent.

Similarly as regards extradition, the co-operation between the Nordic states in this area is not founded on a convention: it is founded on a non-binding agreement. Thus, the achievement of the aims of the agreement is to some extent dependent on the good will of the states. It is a task of the Ministries of Justice in each one of the Nordic states to co-ordinate the legislation with the other states.

The purpose of the co-operation in the enforcement area is, *inter alia*, to promote the rehabilitation or the readjustment of the sentenced person. It is, of course, easier to prepare for a life after release if the enforcement is carried out in the state where the offender plans to live. For example, contacts with presumptive employers and other institutions are simplified. The circumstances mentioned are also presumed to reduce the risk for recidivism.

Another reason for enforcing the sentence in the state where the offender plans to reside is purely humanitarian: in that way he can keep in touch with friends and relatives in a better way. Further, one can per-

[9] See also the *Act (1978:801) on International Collaboration in Non-institutional Criminal Care*. The legal structure is similar in the other Nordic countries.

haps also say that the treatment of the offenders in prison generally will be more satisfactory if they speak the same language as the people who work in prison.

When it comes to non-custodial sanctions as, *e.g.*, suspended sentences, there is also an argument of criminal policy in favour of co-operation: co-operation makes supervision of the sentenced person person possible even if he moves to another state.

5.2 Enforcement of foreign judgements in Sweden

5.2.1 Material conditions

Regarding enforcement of economic sanctions such as fines, or other property related sanctions such as forfeiture, damages and compensation for legal expenses, the rules which are applicable between the Nordic states are very simple. Judgements according to which such sanctions are imposed can, on request, be enforced in Sweden; see the Nordic Act section 1. Thus, there are virtually no prerequisites prescribed. In section 24 it is, it is true, stated that the judgement must be enforceable in the state where it was passed in order to be enforceable in Sweden, but that condition is quite formal in character.

A Nordic judgement on imprisonment may be enforced in Sweden if the sentenced person, at the time of enforcement, is a Swedish citizen or is domiciled in Sweden. Such a judgement may also be enforced in Sweden if the sentenced person is present in Sweden and it is considered appropriate that the sentence is enforced here; see section 5 of the Nordic Act.

Consent from the convicted person is, in principle, not needed but his opinion is generally respected.

Further, Sweden can, on request, supervise offenders sentenced to a suspended sentence. With regard to enforcement of this type of sentences no prerequisites are explicitly stated in the Nordic Act (see sections 10–16) but in principle the criteria used with regard to sentences on imprisonment apply. It was considered to go without saying that supervision shall be enforced by another state than the one which passed the sentence only when the convicted person resides or plans to reside in the former state. (The rule in section 24, *i.e.*, that the judge-

ment must be enforceable in the state where it was passed, is, of course, applicable to all types of enforcement.)

Supervision of persons conditionally released in other Nordic states can, according to sections 17–23 of the Nordic Act, be executed in Sweden. The rules regarding supervision of conditionally released persons and the rules regarding supervision of offenders which have received a suspended sentence are very much the same.

As is the case with regard to extradition and the use of coercive measures on request by a foreign state, the Nordic Act only prescribes necessary conditions for granting a request regarding enforcement. The Swedish authorities have a margin of discretion which can be used, *e.g.*, when the sentence concerns a crime with a political character or a crime which does not correspond to a crime according to Swedish law.

The intention is not, however, that such circumstances shall regularly be regarded as impediments for granting a request, but the margin of discretion makes it possible to take account of such circumstances in cases where there is a pressing need for it.

If we compare these rules with the ones applicable in relation to non-Nordic states we will find fairly apparent differences. First, it should be mentioned that the general rules are quite complex since there is one group of rules which is applicable in relation to enforcement according to the European Convention on the Validity of Criminal Judgements (Validity Convention), another group of rules applicable in relation to enforcement according to the Convention on the Transfer of Sentenced Persons (Transfer Convention),[10] and yet another group of rules applicable in relation to enforcement of judgements in accordance with other special agreements (although there are at present no such agreements).

But even if we leave these complexities aside one can easily see that there are several prerequisites that must be fulfilled if a non-Nordic sentence is to be enforced in Sweden.

If the application concerns enforcement according to the Validity Convention there is, in section 5, a list with eight points which all preclude enforcement, *inter alia*, a requirement of double criminality (section 5 para. 2 in the General Act). Further, in section 6, there is a list with an additional eight points, each of which makes enforcement optional for the Swedish authorities.

[10] The Transfer Convention is open not only to the member states of the Council of Europe, but also to the USA and Canada (that participated in elaborating the convention) and for other states that, by a special decision, are invited by the Council of Europe.

If the application, on the other hand, concerns enforcement according to the Transfer Convention it is, according to section 25a of the General Act, a prerequisite that the sentenced person is a Swedish citizen or is domiciled in Sweden *and* that he consents to enforcement in Sweden *and* that the crime for which he is sentenced corresponds to a crime according to Swedish law (double criminality) *and*, finally, that there are more than 6 months left to serve at the time of the application. In addition, the rules in sections 5 and 6 will probably, by analogy, be used as guidelines when deciding cases in accordance with the Transfer Convention.

5.2.2 Procedural rules

Procedural rules concerning the Nordic co-operation in the enforcement area are to be found both in the Nordic Act and in *Ordinance (1963:194) on Co-operation with Denmark, Finland, Iceland and Norway Concerning Enforcement of Punishment etc.* According to section 25 of the Nordic Act and section 4a of the Ordinance it is the National Prisons and Probation Administration and the National Tax Board that shall examine requests concerning enforcement of judgements from the other Nordic states. If a request concerns enforcement of a sentence of imprisonment and the convicted person is not a Swedish citizen, a report from the Swedish Immigration Board shall be obtained; see section 9 of the Ordinance.

According to the General Act, section 8, a request which is founded on the Validity Convention shall be addressed to the Ministry for Foreign Affairs. The Government then examines whether certain impediments exist. If that is not the case, the request is sent to the Prosecutor General for further consideration. Finally, the Prosecutor General applies for a court hearing concerning the request. The hearing only concerns questions relating to the enforcement: a new trial concerning the guilt of the convicted person is not allowed; see section 10. (*Cf.* with regard to the Transfer Convention section 25a.)

6 Practical experiences and statistics

Due to the decentralized procedure—and the, at least partly, informal character of the co-operation—there are no reliable statistics with regard to most parts of the Nordic co-operation. One can, however, occasionally find statements in the literature which give hints regarding the frequency of certain measures.

For example, in 1984, the Swedish National Police Commissioner of that time, Holger Romander, wrote an article in which he emphasized that the Nordic Agreement was, practically speaking, very important and that transfer of proceedings between the Nordic states occurred more or less every day.[11] With regard to execution of sentences one can also refer to what Professor Alvar Nelson wrote in 1989:

> "With regard to convicted persons the transfer to the other Nordic States has been less than expected. At most, around 150 persons were sent from Sweden annually and around 250 were received. Today no statistics are published."[12]

Further information on statistics and practical experiences have recently become available as a result of an inquiry in which the Nordic Ministries of Justice asked the authorities involved in the Nordic co-operation (*e.g.* Courts and Prosecution authorities) to give an account of their experiences of the Nordic co-operation. The aim of the inquiry was to identify problems in order to be able to evaluate and improve the rules.

Below I will give a short summary of the experiences that Swedish authorities have had.[13]

First, it should be emphasized that several of the Swedish authorities have underlined that the co-operation with the Nordic countries works

[11] Romander 1984 p. 376 f.

[12] Nelson in Jareborg 1989 p. 27.

[13] The Swedish authorities who have answered the inquiry are the district courts and the prosecution authorities of Stockholm, Gothenburg and Malmo.

smoothly and, in comparison, much better than the co-operation with other countries. But problems were also identified—some of which can be considered to be details—and improvements suggested. Below I list some of the most interesting comments.

– In one reply it was held that one of the "problems" with the Nordic co-operation is the informal character which is also accompanied by a general aspiration to find practical, but not always formally regulated, solutions. Though this, on the one hand, may be considered as one of the merits of the Nordic co-operation it is, on the other hand, a source of uncertainty, *e.g.* with regard to the authority competent to take decisions in a particular case (hereinafter, "decision authority"), and the formalities generally.

– In certain respects it was, however, also argued that the decentralization, with regard to decision authority, could go even further. It was, *e.g.*, suggested that the local prosecutor should be able to take a decision on extradition in cases in which it is obvious that the request shall be granted (today these matters are decided by the Prosecutor General). Further, it was held that decisions regarding seizure could be taken by the local prosecutor alone and that the decision should not, as today, have to be confirmed by a court.

– With regard to collection of evidence it was pointed out that co-operation works adequately but that the procedure can be quite troublesome and takes time. (It should also be mention that the value of a testimony given before a foreign court has been questioned in a couple of Swedish district court judgements and also discussed by the Supreme Court in NJA 1991 s. 512.) In several replies it was emphasized that inquests directly with the witness by telephone—and with assistance of the foreign court—would be a preferable solution. Today it is not possible to question a person who is situated in Denmark by telephone (with regard to the other Nordic state the legal situation is more or less uncertain).

– In some replies it was emphasized that the possibility of mutual assistance with regard to telephone-tapping, secret camera surveillance etc. is one of the most important and urgent questions for the future.

– There are, at times, problems with regard to the background material, *e.g.* Swedish authorities do not always get the necessary documents together with a request and, likewise, Swedish authorities do not always know which documents that are necessary to enclose. A standard form for each state, from which one can conclude which documents that are needed, would be valuable.

– With regard to transfer of proceedings it was pointed out that it is unfortunate that different rules are applicable in relation to Finland and

Iceland (the Nordic Agreement) on the one hand and Denmark and Norway (the Swedish Act on Transfer of Proceedings) on the other.

– A common Nordic terminology in the area would be valuable, since the technical language used often has a very precise meaning. Another suggestion was to put together a Nordic dictionary covering the terms which are most frequently used.

– Lastly, it was emphasized in several replies that the rules which govern the Nordic co-operation are not in all parts easy available and that it would be valuable if the existing rules and agreements were consolidated and simplified.

In several replies problems was identified and changes suggested which concern details in the existing rules. It was, *e.g.*, held that the fact that extradition cannot be granted if preliminary investigations are in progress concerning an offence which can lead to two years of imprisonment, could lead to unsatisfactory results (*e.g.* extradition can be barred by an old fraud offence). Since these suggestions are not of general interest I will not give an complete account of them.

The replies to the inquiry do not contain any precise information on the frequency of the different measures. Some general statements are given, however, which imply that extradition and transfer of proceedings are the measures which are used most frequently (at least by some authorities). Further, in several replies it is stated that collection of evidence is a measure which is seldom used.

7 Concluding remarks

On the basis of the foregoing presentation we can conclude by saying that the most important parts of the Nordic co-operation are

(1) the simplified procedure used when requesting assistance in any way, and

(2) the less rigorous requirements for granting assistance.

To what extent these simplifications of the co-operation in criminal matters can be advantageous also on a European basis is a question which needs further examination. (Measures which go in a simplifying direction have already been taken within the EU in certain areas. *Cf.* especially the Convention on Simplified Extradition Procedure Between the Member States of the European Union and the Convention Relating to Extradition Between the Member States of the European Union.)[14]

Generally, one could perhaps say that the simplified (and decentralized) procedure presupposes some confidence both in the authorities at home and in the authorities of the other states involved, but not much more.

Minimizing the requirements for granting assistance is a more far-reaching form of co-operation since it presupposes confidence not only in the authorities of the other states, but also in their penal policy etc.

But this is only one side of the coin. The guarantees granted to the suspected or convicted person involved must also be considered. With regard to procedure one should, *e.g.*, keep in mind that a centralized procedure can be seen as a measure taken in order to guarantee a certain quality of the decisions and to make sure that the person involved is treated in an acceptable way.

Further, the requirements which must be fulfilled in order to grant mutual assistance can be viewed not only as an expression of mistrust, but also as parts of a system built on the idea of legal certainty, *i.e.*, as

[14] See OJ No C 078, 30.3.1995 p. 1 ff and OJ No C 313, 23.10.1996 p. 11 ff.

guarantees granted to the person involved. One could therefore argue that it is not acceptable to minimize the requirements merely by referring to considerations of efficiency or to great confidence in the authorities of other states.

Another point that should be emphasized is that some of the forms of co-operation that exist between the Nordic states seem to presuppose some sort of geographical proximity (*e.g.* the duty to give evidence as a witness). One can say that the Nordic states have had very favourable conditions for developing different forms of co-operation.

Finally, it should be mentioned that the fact that the Nordic co-operation does—at least in comparison with the co-operation with non-Nordic states—work smoothly is partly due to quite informal factors. *E.g.*, there is a meeting every year in which some of the Nordic prosecutors get together and have a chance to get to know each other. And as always: to personally know someone is often more valuable than any formal agreement. Further, the fact that the prosecutors involved in the Nordic co-operation to a large extent can use their native language is probably also a factor of importance.

Bibliography

Berg, Ulf, Berggren, Nils-Olof, Munck, Johan, Werner, Anita, Victor, Dag & Örn, Claes, *Kommentar till brottsbalken.* Del III (25–38 kap.). Påföljder m.m. Följdförfattningar. 4 upplagan. Stockholm 1994.

Cameron, Iain, *The Protective Principle of International Criminal Law.* Aldershot 1993.

Dahlberg, Matts, Drangel, Bo & Kring, Claes, "Utlämning för brott från Sverige till Danmark, Finland, Island och Norge." *Svensk juristtidning* 1984 pp. 597–619.

Danelius, Hans, "Om utlämning av brottslingar från och till Sverige." *Svensk juristtidning* 1982 pp. 621–634.

Ds Ju 1973:12. Internationellt samarbete rörande lagföring i brottmål.

Erenius, Gillis, "Sannolikt och rättskraftigt i utlämningsrätten." *Svensk juristtidning* 1983 pp. 241–256.

Falk, Per, *Straffrätt och territorium.* Stockholm 1976.

Holmberg, Carl, Hult, Bengt, Leijonhufvud, Madeleine & Wennberg, Suzanne, *Kommentar till brottsbalken.* Del 1 (1–12 kap.). Brotten mot person och förmögenhetsbrotten m.m. Stockholm 1995.

Holmberg, Carl, Leijonhufvud, Madeleine & Wennberg, Suzanne, *Brottsbalken.* En kommentar. Del II (13–24 kap.). Brotten mot allmänheten och staten m.m. 7 upplagan. Stockholm 1998.

Horned, Owe, "Aktuella praktiska och rättsliga problem vid överförande av straffverkställighet." *Nordisk Tidsskrift for Kriminalvidenskab* 1994 pp. 183–196.

Jareborg, Nils (ed.), *Double Criminality.* Studies in International Criminal Law. Uppsala 1989.

Jareborg, Nils & Asp, Petter (ed.), *Svensk internationell straffprocessrätt.* Uppsala 1995.

Larsson, Nils R., "Internationell samverkan i rättegång." *Svensk juristtidning* 1974 pp. 766–785.

Larsson, Nils R., Internationell samverkan i rättegång." *Svensk juristtidning* 1974 pp. 453–460.

Magnuson, Lars, "Inbördes rättshjälp." *Svensk juristtidning* 1991 pp. 497–527.

Nelson, Alvar, *Kriminalpolitik och ingripanden vid brott.* 1990 års upplaga. Uppsala 1990.

Nordiska straffrättskommittén, *Straffrättslig jurisdiktion i Norden.* Nord 1992:17.
Nytt juridiskt arkiv II 1947 (pp. 211 ff), 1959 (pp. 79 ff), 1962 (pp. 51 ff), 1974 (pp. 641 ff), 1975 (pp. 633 ff), 1976 (pp. 297 ff).
Riksåklagaren, Cirkulär C 65, Lagföring i annat nordiskt land än det där brottet förövats.
Riksåklagarens författningssamling. Riksåklagarens anvisningar om utlämning för brott. RÅFS 1984:1, RÅ C I:103.
Romander, Holger, "Om överföring av åtal inom Norden." *Rett och rettssal.* Festskrift till Rolv Rylssdal. Oslo 1984, pp. 371–377.
Åklagarväsendet, Internationell handbok. Nordiska utlämningsärenden.

ISBN 91-7678-394-4