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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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EUROPEAN COMMITTEE ON CRIME PROBLEMS

(CDPC)

Committee of Experts on the Operation of European Conventions in the Penal Field
(PC-OC)

SUMMARY REPORT of the 45th meeting Strasbourg, 30 September – 2 October 2002

Secretariat memorandum
prepared by the
Directorate General of Legal Affairs
as approved by
the PC-OC on 3 March 2003

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1. The PC-OC held its 45th meeting from 30 September to 2 October 2002, at the Council of Europe headquarters in Strasbourg. The Committee met under the chairmanship of Mr M. Knaapen (Netherlands) on 30 September, followed by Mr E Selvaggi (Italy) on 1 and 2 October.

2. Having changed job and left the Ministry of Justice, Mr M Knaapen resigned from the chair of the PC-OC with effect from 1 October 2002. The term of office of Mr M Hatapka expired in September 2002. The PC-OC was invited to elect the Chair and a Vice-Chair.

[1] **This document is classified only with respect to the list identifying persons, that appears in Appendix I. The list does not appear in the internet version of this document : cf. www.coe.int/tcj**

Mr Selvaggi, vice-Chairman of the Committee, having been elected Chairman of the Committee, the PC-OC was also invited to elect another Vice-Chair.

3. Following the elections, the Bureau of the Committee is formed as follows:
   - Mr E. Selvaggi (Italy), Chair;
   - Ms Imbi Markus (Estonia), Vice-Chair;
   - Ms Astrid Offner (Switzerland), Vice-Chair.

The Committee was not called upon to take a decision on the order pr precedence of the vice-chairs. They are therefore indicated in alphabetical order.

4. The list of participants forms Appendix I to this report.

5. The Agenda of the meeting, as adopted by the Committee, forms Appendix II to this report.

6. The Committee worked on the basis in particular of the following:

(a) Conventions

ETS 24	European Convention on Extradition
ETS 30	European Convention on Mutual Assistance in Criminal Matters
ETS 51	European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders
ETS 112	Convention on the Transfer of Sentenced Persons

(b) Working papers

PC-OC (2002) OJ 2 REV 2	Draft agenda
PC-OC (2001)05	Summary Report of the 44th meeting
PC-OC (2001)07	Notes for drafting a preliminary draft recommendation on the practical application of the European Convention on Mutual Assistance in Criminal Matters and the additional protocols thereto
PC-OC (2001)08	Convention on the transfer of sentenced persons : relations with the USA
PC-OC (2001)09	Extradition / Speciality rule, Israel
PC-OC (2001)10	Observations submitted by Mr Örjan Landelius (Sweden)
Addendum II to CDPC (2002) 15	Final activity report of the Reflection Group on developments in international co-operation in criminal matters (PC-S-NS)
Appendix IV to CDPC (2002) 15	ad hoc terms of reference given to the PC-OC
CJ-PD/GT-PJ (2002) RAP 4 rev	Project group on data protection (CJ-PD), final activity report on data protection and police and judicial data in criminal matters

(c) Information documents

The list of information documents available is published under the reference PC-OC / INF. The reference of the relevant web page is **www.coe.int/tcj.**

Adoption of the report of the 44th meeting

7. The Committee adopted the report of its 44th meeting, as it appears in document PCOC (2001)05.

New ad hoc terms of reference given to the Committee

8. On 18 September 2002, at the 808th meeting of the Ministers' Deputies, the Committee of Ministers approved all the decisions taken by the CDPC at its plenary meeting in June, including ad hoc terms of reference for the PC-OC – documents CDPC (2002) 15, Addendum II, Final activity report of the Reflection Group on developments in international co-operation in criminal matters (PC-S-NS), and CDPC (2002) 15, Appendix IV, ad hoc terms of reference given to the PC-OC.

9. The terms of reference addressed to the PC-OC read as follows:

At its 51st plenary session, the CDPC examined the report submitted to it by the Reflection Group on developments in international co-operation in criminal matters (PC-S-NS) [document CDPC (2002) 1] and decided:

a. to instruct the PC-OC to set up a Working Party for the purpose of

- making proposals for follow-up action, excluding norm-setting activities, to the chapters "Visibility" and "Consistency" of that report;

- preparing a feasibility study, including costs, for setting up and operating a data base as proposed in Chapter I.C of that report, taking due account of work presently being carried out in the European Union for similar purposes;

b. to instruct the PC-OC, bearing in mind that report and its own experience, to draft guidelines for a clear and coherent policy that the Committee of Ministers would be recommended to follow when examining requests from non-member States to accede to Council of Europe conventions in the penal field.

10. These terms of reference will expire on 31 May 2005.

11. In accordance with these terms of reference, the PC-OC decided to set up a Working Party for the purposes of

- making proposals for follow-up action, excluding norm-setting activities, to the chapters "Visibility" and "Consistency" of that report;

- preparing a feasibility study, including costs, for setting up and operating a data base as proposed in Chapter I.C of that report, taking due account of work presently being carried out in the European Union for similar purposes;

- bearing in mind that report and its own experience, to draft guidelines for a clear and coherent policy that the Committee of Ministers would be recommended to follow when examining requests from non-member States to accede to Council of Europe conventions in the penal field.

The Working Party should report back to the PC-OC by 31 May 2004.

The membership of the Working Party is as follows:

- Mr E. Selvaggi (Italy), Chair;
- Ms Imbi Markus, Vice-Chair;
- Ms Astrid Offner, Vice-Chair;
- Ms Joana Gomes Ferreira (Portugal)
- Ms Gertraude E. Kabelka (Austria)
- Ms Malgorzata Skoczelas (Poland)

12. The Committee invited the Secretariat to prepare and distribute a questionnaire where different ideas would be developed on the issue of the accession of non-member States to European conventions.

Transfer of sentenced persons: relations with the USA

13. The Secretariat reported (doc. PC-OC (2002) 08 rev) on a Seminar organised in Washington in June 2002 (cf. para 18 of the report of the 44th meeting of the Committee). Those present who had attended the Seminar acknowledged that it had been very helpful, in particular because participants left with greater understanding of the issues involved in the transfer of prisoners and the possibilities opened by the Convention.

It was stressed that the USA intent in this matter is not only to bring nationals back. Indeed, the rehabilitation of sentenced persons is also a concern to them.

In order to assist the American federal authorities in their efforts to bring about change in the attitude of individual states it is vital to keep this issue in the CoE's Agenda, The PC-OC will no doubt keep following this file which is doomed to become more and more political.

In particular, it is very helpful when consular officials are involved in the process of obtaining the transfer of persons imprisoned in states' prisons. The PC-OC and its Secretariat remain ready to assist any State in this process.

Transfer of sentenced persons: possible more extensive use of the Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders

14. In a document submitted to the Committee (doc. PC-OC (2002) 10), Mr Örjan Landelius mentions the possibility of applying the Supervision Convention as a way of supplementing the Transfer Convention.

The ensuing discussion showed that, while the Supervision Convention is in fact seldom applied, there is potential and probably advantage in applying it more often as a way of securing

(a) that aliens are treated in the same way as nationals, in the sense that courts are not led to sentence them to imprisonment (where a national would have had a non-custodial sentence) on the assumption that non-custodial sentences cannot be carried out;
(b) that foreign sentenced persons eligible for conditional released (parolees) may be transferred on the understanding that they will be supervised in their home country.

In particular, recourse to the Supervision Convention in relations with the USA might be helpful.

Article 49 (f) of the Schengen agreement was mentioned. It reads as follows:

"Mutual assistance shall also be afforded:
[...]
(f) in respect of measures relating to the suspension of delivery of a sentence or measure, conditional release or the postponement or suspension of execution of a sentence or measure."

15. The Secretariat was invited to report back to the Committee on this issue.

Transfer of sentenced persons: accession of CoE member States to the Inter-American Convention on Serving Criminal Sentences Abroad (Organisation of American States - OAS)

16. It is now certain that non OAS countries can join the OAS Convention. It was suggested that CoE members who require a treaty with any OAS member, or who are approached by an OAS member to that effect, should firstly seek accession of that country to the CoE Convention. Where that proves not to be possible, the alternative to a bilateral treaty could be to accede to the OAS Convention.

Mutual Assistance in Criminal Matters: preparation of recommendations on the practical application of the European Convention and its Protocols

17. The Committee had requested its members to forward to the Secretariat, by 4 May 2002, their views as to what should be recommended with respect to each point identified in a list [cf. par. 20 of doc. PC-OC (2002) 05]. One only contribution reached the Secretariat by the date of the meeting. The Secretariat prepared draft proposals concerning part only of the points identified (see doc. PC-OC (2002) 07).

18. The Committee examined and discussed the draft prepared by the Secretariat in document PC-OC (2002) 07. Members were requested to forward comments, if any, and/or contributions, to the Secretariat, by the end of the year.

Mutual Assistance in Criminal Matters: reservations entered with respect to the European Convention and its Protocols

19. The Committee had asked its Bureau to prepare a list of issues relating to existing reservations to the Convention on Mutual Assistance in Criminal Matters, that arise difficulties, for discussion at its next meeting. For lack of time, the Bureau could not prepare such a list. The discussion of this point was therefore postponed until the next meeting.

Application of the Conventions by individual States

20. The Committee was informed that important reforms had in the recent past been introduced in the Russian Federation, in judicial matters and in particular in the distribution of powers amongst different agencies, including the Prosecutor General's Office.

The Committee had announced that it welcomed information on the extent to which such reforms might have a bearing with the way in which Russia will henceforth operate the different Council of Europe Conventions in the penal field to which it is a Party, namely Conventions:

ETS 24	European Convention on Extradition
ETS 30	European Convention on Mutual Assistance in Criminal Matters
ETS 86	Additional Protocol to the European Convention on Extradition
ETS 90	European Convention on the Suppression of Terrorism
ETS 98	2nd Additional Protocol to the European Convention on Extradition
ETS 99	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
ETS 141	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime

21. In this respect, the expert from Russia made a statement that is reproduced in Appendix III.

Practical difficulties arising out of the application of the Conventions

22. As usual, the members of the Committee were invited to report on any difficulties arising out of the application of the Conventions.

Extradition (Art 14: rule of speciality)

23. In document PC-OC (2002) 09, the observer from Israel raised the following question.

Article 14.1 of the Extradition Convention provides :

"Rule of Speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, **nor shall he be for any other reason restricted in his personal freedom,** except in the following cases:

   (a) When the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention;

   (b) When that person, having had an opportunity to leave the territory of the Party to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it."

There is no explication in the Explanatory Report as to the scope or meaning of the words "**for any other reason**".

The prosecution authorities in Israel recently withdrew its indictment against an individual who had been extradited several years earlier from Switzerland. When this individual sought to depart Israel, however, he was unable to do so due to stop orders that had been issued against him in a civil bankruptcy matter. These civil actions related to the same transactions that had given rise to the indictment against him. At least one of the stop orders appears to have been issued prior to his extradition.

It was the contention of the extradited person and his attorneys that under Article 14 of the Convention, Israel had the obligation to allow him to leave Israel in spite of the civil stop orders because that Article prohibited restrictions on his liberty for any reason other than the criminal charges against him (and those criminal charges had been dropped.) It was the contention of the parties to the civil litigation who had obtained issuance of the stop orders that Article 14 relates only to restrictions based on criminal proceedings and does not relate to restrictions that derive from civil matters.

The Swiss authorities have indicated that their interpretation of Article 14 agrees with that of the extradited person and his attorneys and have maintained that he should be permitted to leave Israel. This is also the position of the Israel's Attorney General and we have submitted papers to that effect before the Israeli Court considering the matter.

While the particular manner the issue arose in Israel may be related to Israel's own civil procedures, it is possible to imagine the issue arising in a number of contexts. One hypothetical situation might be the case of a person being extradited to a country where, in addition to the criminal charges against him, he owes maintenance or child support payments. Once the criminal prosecution or sentence against him has been completed, can his liberty to leave the requesting country be restricted in any way to assure his payment of child support obligations ?

24. Article 14 expresses the rule of speciality as it must apply within the framework of the Extradition Convention. It restricts the powers of the receiving State when exercising jurisdiction over the extradited person. Although the extradited person moves to the territory of the receiving State, the latter may not fully exercise its jurisdiction over that person. Indeed, Article 14 recognises extradited persons an immunity.

The effect of the immunity is that the person shall not :

(a) be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited,
(b) for any other reason. be restricted in his or her personal freedom

Clearly, immunity ceases to apply under the circumstances described in sub-paras (a) and (b) of Article 14.1.

As far as it concerns offences, i.e. (a) above, the immunity is clearly limited in time to those allegedly committed prior to the surrender of the person. Although such is not written down in Article 14, it is appropriate to extend that conclusion to the whole scope of the immunity. Indeed, within the context of Article 14, it appears to be undisputable that immunity applies only to facts occurred prior to the surrender of the person.

The immunity is therefore not absolute in terms of time: is it absolute in terms of substance ? The words "for any other reason" indicate that the immunity covers a very wide range of reasons. There appears to be no indication of any circumstances under which immunity would not apply, other than those described in sub-paras (a) and (b) of Article 14.1.

Indeed, there are circumstances under which the public interest may be seen to require that the person does not benefit from immunity (for example, where obligations under family law are not complied with). In such cases, the issue is not one of questioning the applicability of Article 14. The response may well be that it belongs to the extraditing State, eventually at the request of the receiving State, to ponder the different public interests at stake in any given circumstances and to decide whether or not to consent to immunity ceasing to apply.

A stop order amounts to a "restriction in the personal freedom" of the person concerned and therefore, according to Article 14, cannot be imposed unless the provisions of sub-paras (a) or (b) of Article 14.1 apply, notably if the Party having surrendered the persons consents.

Extradition (2nd Add Protocol, Art 5; Convention Art 12)

25. The question was raised of whether Article 5 of the 2nd Additional Protocol to the Extradition Convention concerns channels of communication or the production of the request.

Article 5 may be interpreted to fill a lacuna left open by the Convention where it fails to indicate (Article 12) which authority is empowered to issue requests for extradition. Authority to act, or locus standi, is usually an essential requirement in any legal procedure. One might therefore wonder why the Convention does not state which entity has powers to issue a request for extradition and see in Article 5 of the 2nd Protocol a reply to that question.

It appears however, that requests for extradition are addressed by one State to another State. The Convention regulated in Article 12 the channels of communication between States. The question of powers of authority is a domestic one which each State must cope with under its own procedures; it is not one where the other State may look into

Thus, Article 5 will be interpreted by most to mean that requests must be communicated via the Ministry of Justice, i.e. that requests "shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party". It goes on to provide that "the use of the diplomatic channel is not excluded". The words "addressed" and "channel" would tend to confirm this interpretation.

Transfer of Sentenced Persons (Protocol, Art 2)

26. The central authority for transfer of sentenced persons of State A received a request form State B asking, under the Additional Protocol to the Convention on the Transfer of Sentenced Persons to take over the execution of a sentence imposed by a court of State B.

The person concerned is a national of State A and was in the territory of State A at the time of the request. The judgment was passed *in absentia*. From the records, it is clear, that he was informed about the courts hearings in State B. Moreover, his counsel had submitted an appeal to the higher instance court in State B, but the appellate court upheld the previous judgement.

Paragraph 11 of the Explanatory Report to the Additional Protocol is very clear where it states that Article 2 does not cover the situation where a national of State A is tried and sentenced *in absentia* in State B. Moreover, the national legislation of State A does not allow for trials in absentia, except in case of genocide. The judgement passed in the State B is in this way contrary to the legal order of State A.

If the person concerned was not present in State B, neither at the time of the trial, nor afterwards, it is clear, having in mind para 11 of the Explanatory Report, that the Additional Protocol to the Convention on the Transfer of Sentenced Persons does not apply.
If, however:

(a) the absentia situation has been "corrected" by the fact that the person concerned lodged an appeal, and

(b) the person has been present in State B after the judgment and then left that State, thus *seeking to avoid the execution of the sentence in State B by fleeing to State A before having served the sentence*,

then, one might wish to consider that the Additional Protocol to the Convention on the Transfer of Sentenced Persons applies.

An important issue that this case raises is the one to know how to avoid a situation where a person accused/sentenced of serious crimes may go unpunished because of the failure of the present system of international criminal law to ensure that justice is made. The "New Start" report indicates ways of working in the future to solve such problems.

Dissemination of information of interest to practitioners of international co-operation in criminal matters: web site

27. The Secretariat made a presentation of the web site **www.coe.int/tcj** to the Committee.

The web site presently contains most of the information that previously was available in the information documents. Inclusion of more information in the web site depends mainly on the Secretariat receiving from States such information in electronic form.

Information about work being carried out in the Council of Europe with interest to the PC-OC

International Criminal Court

28. The Secretariat informed the Committee that a Group of Experts for Consultation on the International Criminal Court (PC-S-ICC) had been set up. The terms of reference of the new Committee were distributed. In accordance with paragraph 5 d of such terms of reference, the PC-OC is invited to appoint a person to participate, for the Committee, in the work of the PC-S-ICC without the right to vote.

Mr Nicolaos Paraskevopoulos (Greece) kindly accepted to represent the PC-OC at the PC-S-ICC.

Conference of Prosecutors General of Europe

29. The Secretariat informed the Committee about the latest developments concerning the Conference of Prosecutors General of Europe. The Committee was invited to look into the Conference's web site: **www.coe.int/legalprof.**

Data protection

30. The final activity report of the Working party on data protection and police and judicial data in criminal matters (CJ-PD/GT-PJ), revised by the Co-ordination Group of the Project Group on Data Protection (CJ-PD-GC) at its 10th meeting (11-13 June 2002), was made available for information. That report was to be submitted to the CJ-PD for approval. Therefore, the report remained provisional and subject to amendments.

Money laundering

31. Having examined the final activity report of its Reflection Group on the advisability of drawing up an Additional Protocol to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (PC-S-ML), the CDPC invited Delegations to submit (by 1 October 2002) written observations on the issues addressed in the report and to indicate their priority with regard to the two options proposed for the review of the Convention.

Cybercrime

32. The Committee of Ministers adopted the text of the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. The date of opening for signature remains to be fixed.

Terrorism

33. The PC-OC was called upon to appoint one expert to participate for the Committee in the Multidisciplinary Group on International Action against terrorism (GMT). Mr Landelius who had kindly performed that function in the past, declared that he could no longer do it because of the new functions that he had taken up in his country. Because (a) there were no volunteers to that effect, (b) the GMT was scheduled to have one only more meeting and (c) because the PC-OC's views had been abundantly expressed to the GMT in the past, the Committee decided to abstain from appointing a representative

Information on co-operation in criminal matters between
- **the Members of the European Union**
- **other**

34. The expert from Denmark informed the Committee about the latest developments in co-operation in criminal matters within the European Union.

Miscellaneous

35. The expert from the Slovak Republic informed the Committee about a new Act concerning international co-operation in criminal matters, that entered into force on 1 October 2002.

Dates of next meetings

35. The Committee agreed on the following dates for its next meetings:

46th meeting: **3 – 5 March 2003**

47th meeting: **29 September – 1 October 2003**

APPENDIX I / ANNEXE I

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

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not available on the internet

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APPENDIX II

AGENDA

1. Opening of the meeting

2. Election of the Chair and one Vice-Chair

3. Adoption of the Agenda

4. Adoption of the report of the previous meeting

5. New ad hoc terms of reference given to the Committee

6. Transfer of sentenced persons
- **(a) relations with the USA;**
- **(b) possible more extensive use of the CoE Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS 51);**
- **(c) accession of CoE member States to the Inter-American Convention on Serving Criminal Sentences Abroad (Organisation of American States - OAS)**

7. Mutual Assistance in Criminal Matters: preparation of recommendations on the practical application of the European Convention and its Protocols

8. Mutual Assistance in Criminal Matters: reservations entered with respect to the European Convention and its Protocols

9. Application of the Conventions by individual States

10. Practical difficulties arising out of the application of the Conventions

11. Dissemination of information of interest to practitioners of international co-operation in criminal matters: web site

12. Information about work being carried out in the Council of Europe with interest to the PC-OC

13. Information on co-operation in criminal matters between
- **the Members of the European Union**
- **other**

14. Miscellaneous

15. Dates of next meetings

APPENDIX III / ANNEXE III

INTERVENTION OF THE RUSSIAN EXPERT

Item 9 of the Agenda

Mr Chairman,

The new Code of Criminal Procedure of the Russian Federation entered into force on the 1st of July (2002). This means that considerable changes have taken place in the administration of criminal justice in Russia. One of the most important among them is a new competitive character of judicial process to which all parties are equal now. That means that each party to the process has to prove its own rightness in an open way.

Another important provision of the Code regulates a possibility to limit constitutional rights of an individual only upon court's decision and not in any other way. This new Code grants to a citizen of the Russian Federation a free access to judicial system and equal rights to be heard before a court with participation of a jury.

The new Code introduces court's supervision over the activities of the bodies which are vested with powers of prosecution. These bodies do have now the same procedural rights in court as defence has. Limitation of constitutional rights and freedoms (such as arrest, search, forceful sending of a person to medical premises) of citizens which have not yet been proved to be guilty becomes impossible without decision of a court. It is highly important that this procedure can be executed only openly by a Prosecutor with an obligatory participation of a person which is accused and in the presence of his/her advocate.

According to the new Code a court becomes free from any function of accusation. It is no longer a body of prosecution and it no longer acts for the prosecution or for the defence. A prosecutor who could have been absent in some court hearings before now can no longer be substituted by a judge. Prosecutor's participation becomes indispensable during court's hearing of cases of public accusation.

Court has no longer powers to return a case for additional investigation. This gives a hope that period of administration of criminal justice would be considerably shortened.

Guarantees that rights of an accused person won't be breached are considerably strengthened. Advocate is let to participate in criminal cases from the moment when a person suspected of an offence is arrested. There are also significant changes in the mandate of the prosecutor's office. From the supervisory body over how law is observed even by court itself in some cases, prosecutor becomes a party, which has to present an accusation on behalf of the State and is responsible for a qualitative and well-founded accusation. According to the new Code a prosecutor along with expressing "public" interest at court may become kind of an "advocate" for the accused person should the prosecutor's position be bad prepared.

A new order of judicial investigation is introduced by the Code since an accused person agrees with the accusation. There is a hope that such a procedure will speed up considerably judicial process as far as minor criminal offences are concerned. Besides this should help to reduce enormously the time people spend in custody.

Mr. Chairman,

Another important point is that the new Code has a special Chapter V: "International Co-operation in the Sphere of Criminal Matters". Provisions of the Code contained in that Chapter describe in detail the way judicial, prosecutor and investigating authorities should participate in international co-operation on criminal matters aimed at extradition or other form of mutual legal assistance in this field.

As far as multilateral instruments are concerned and namely those of the Council of Europe as well as bilateral treaties (including those concluded with the former USSR Republics) according to para 4 Art.15 of the Russian Constitution all these instruments are considered to be an integral part of the Russian legal system. Should these instruments have other provisions than those stipulated by the national legislature, provisions of the international instruments would be applied. This is a constitutional norm, which is also fixed in para 3 Art. 1 of the Code. Therefore relevant provisions of the CoE Conventions to which Russia is a party are applicable (in case of any inconsistencies with obligations and provisions of national legislature).

It is also worth mentioning that Russia has quite a number of treaties in the field of mutual legal assistance on civil and criminal matters. For example we have such treaties with the Republic of Poland (16.09.1996), United States of America (17.06.1999), Canada (20.07.1992), Spain (25.03.1996). Treaties of legal assistance on civil, family and criminal matters Russia has with Republic of Latvia (03.02.1993), Republic of Lithuania (21.07.1992), Republic of Estonia (26.01.1993), Republic of Azerbaijan (22.12.1992) and many others.

Provisions of Part V "International Co-operation in the Sphere of Administration of Criminal Matters" are supposed not to substitute relevant provisions of international treaties and conventions to which Russian Federation is a party, but exactly to the contrary – being used in the system of other than national legislative acts – to provide fulfilment by the Russian Federation of the international obligations it has voluntarily subscribed to.

According to para 1 Art. 453 a legal basis for a request (on mutual legal assistance) is not Art. 453 itself, but a provision (a norm) of an international treaty to which the Russian Federation is a party. Therefore such a request cannot contain only a reference to the Art. 453, but it has to have a reference to a specific international treaty, stipulating such an assistance, subject to the Russian Federation's participation in this international instrument. It is also worth mentioning that such an assistance may be requested only to the extent it is stipulated by such a treaty. When there is a request for legal assistance from an authority of a state with which Russian Federation does not have any agreement on mutual legal assistance in criminal matters a reference to the principle of reciprocity may serve as a legal basis for such a request along with an obligation of this foreign state to provide in its turn assistance upon receipt of a relevant Russian request. In such cases legal assistance is traditionally provided on a mutual basis and according to the relevant provisions of international treaties.

Should an international treaty has some other language, other modalities of international co-operation, or other terms (request, demand etc.) and requisites of documents than those listed in Art. 453 and 454 of the Code than one should rely on the relevant norms on an international instrument when preparing a request.

For example, according to Art. 5 of the Treaty on mutual legal assistance and legal relations on civil, family and criminal matters between the Russian Federation and the Republic of Latvia requests are prepared on the language of a requesting party and not on that of a requested party (subject to other provisions of the Treaty). There are similar provisions in the Art. 5 of the same Treaty between the Russian Federation and the Republic of Estonia (26.01.1993).

According to para 3 Art. 453 a request may be sent through the following authorities:

1) Supreme Court of the Russian Federation – on matters pertaining to administration of justice and other activities of the Supreme Court of the Russian Federation;
2) Ministry of the Interior of the Russian Federation – on matters pertaining to the administration of justice and activities of all courts with the exclusion of those pertaining to the competence of the Supreme Court of the Russian Federation;
3) Ministry of Justice of the Russian Federation, Federal Security Service, Federal Tax Police Service of the Russian Federation – on matters pertaining to investigation activities which does not necessarily need a court decision or a consent of a Prosecutor;
4) Prosecutor General Office – on all other matters.

Para 4 Art. 453 means that international co-operation on criminal matters is dealt by the Prosecutor General on behalf of the Russian Federation.

Para 2 Art. 63 of the Russian Constitution provides that extradition of persons accused of having committed a crime is regulated by Federal Law or an international treaty of the Russian Federation. According to this provision and para 1 Art. 61 and para 2 Art. 62 of the Russian Constitution a Russian citizen including those who have double citizenship) can not be extradited to other state. A person also can not be extradited if it is another state for his/her political convictions.

Para 2 Art. 464 fixes a right **to refuse an extradition** of a person who committed an offence (which provided a basis for such a request) which is not considered by the Russian Criminal Legislature as a crime. This provision is of imperative character and means that such a person cannot be extradited. It is a duty of authorities, which are vested with powers to extradite, to refuse to a foreign state in fulfilling such a request since para 2 Art. 63 of the Russian Constitution directly prohibits any extradition of a person for actions (or lack of actions) which are not considered as a crime in the Russian Federation.

According to the international instruments a refusal to extradite a person to a foreign state (Art. 464) implies a duty of such a refusing country to transmit the matter to its own competent authorities for the purposes of prosecution and to execute criminal procedures against such a person upon the demand of a relevant state.

Before conclusion, Mr Chairman, let me express sincere thanks to the CoE for the help it has provided in elaboration of the new Code Russian authorities are satisfied with the co-operation they had on this matter and they tried their best to follow all the recommendations CoE has provided. The Code was also presented for the CoE legal expertise. All these activities let the Russian Federation (one among the first CoE members) to reflect in its new Code relevant recommendations of the Committee of the Ministers on a special procedure of revision of national court's decisions on criminal matters when such matters are heard before the European Court (on human rights) and decisions are taken by it.

Mr. Chairman, full text of the Code is available in the Internet site of the Russian State Duma and I have a copy of the Part V "International Co-operation in the Sphere of Criminal Matters", which I would be pleased to share with colleagues who have an interest in it.

Thank you for your attention.