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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
PC-OC

Discussion paper:
The current and future role of the PC-OC

Secretariat memorandum prepared by
the Directorate General of Human Rights and Legal Affairs (DG-HL)

Introduction

1. According to its terms of reference, the PC-OC has the following tasks:
 - i. monitor the operation of the Conventions on international co-operation in criminal matters with a view to facilitating their practical implementation;¹
 - ii. consider various steps and initiatives to improve the efficiency of international co-operation in criminal matters. This would be carried out in particular through various measures to improve practical co-operation and, in conformity with instructions given by the CDPC, through the development of normative texts;
 - iii. follow developments in other international frameworks (e.g. United Nations, European Union) in the fields covered by these conventions and, where appropriate, propose measures likely to ensure their conformity with such developments;
 - iv. follow the application of the European Convention on Human Rights with regard to international co-operation in criminal matters.”
2. While the Council of Europe instruments have been the cornerstone of European co-operation in criminal matters for decades, the PC-OC currently finds itself in a rapidly changing environment. On the one hand, with the entry into force of the Lisbon Treaty and the adoption of the Stockholm Programme, the EU has newly found competences in the criminal law field and the outspoken ambition to replace the existing co-operation framework with instruments based on mutual recognition², even though the Stockholm programme refers to the need to develop synergies with the Council of Europe and to promote the ratification of its Conventions. On the other hand, there are also initiatives within the UN to draw up a universal convention on co-operation in criminal matters³, and INTERPOL has also started pointing in this direction⁴.
3. At the same time, there is an ongoing reform process within the Council of Europe, which will involve the reallocation of resources in accordance with political priorities to be defined by the Secretary General and approved by the Committee of Ministers.
4. For these reasons, this might be a suitable moment for the PC-OC to reflect on its current and future role, its tasks, its practical tools and its working methods, as well as ways in which the added value of its contribution could be rendered more visible. As the main Council of Europe instruments on international co-operation in criminal matters (in particular on extradition, mutual legal assistance, transfer of sentenced persons and transfer of proceedings) lie at the core of the activities of the PC-OC, this exercise should also include a discussion on the current and long-term relevance of these instruments. The identification of their key added value would allow the PC-OC to recognise the strengths of its own work, as well as areas that need to be improved, and if necessary, to reposition this work consciously to be able to better serve these instruments.

¹ These Conventions include ETS No. 24 (extradition, and Protocols ETS Nos 86 and 98), 30 (mutual legal assistance and Protocols ETS Nos 99 and 182), 51 (supervision of sentence), 52 (road traffic offences), 70 (validity of criminal judgments), 73 (transfer of criminal proceedings), 88 (deprivation of right to drive), 97 (information on foreign law), 101 (possession of firearms), 112 (transfer of sentenced persons and its Protocol ETS No. 167), 116 (compensation of crime victims), 156 (illicit traffic by sea).

² See, for example, the speech of Commissioner Reding at the European Law Academy Trier, 12 March 2010: “Those who only want to rely on the old system point to the tools such as the Council of Europe Conventions and the often archaic traditional mutual legal assistance systems that we already have. I say that this is not enough. We must improve these tools.”

³ Conclusions of the 12th UN Congress on Crime.....(Salvador de Bahia, 12-16 April)

⁴ Report No. 13, “Enhancing the international status of Red Notices”, 78th session of the General Assembly of INTERPOL.

5. The three main lines of action of the PC-OC have been (1) normative/standard-setting activities, (2) practical measures, and (3) discussion of practical problems and friendly settlement of difficulties. Therefore, the description of the recent activities of the PC-OC and ideas to be explored for the future set out below follow this structure. It is important to underline, however, that these different types of activity shall not be considered as impermeable, but clearly overlap in certain respects and feed into one another. Nevertheless, the PC-OC might find it useful to discuss the relative weight it wishes to allocate globally to these three types of activity.

Relevance of the Conventions

6. The three main Conventions under the purview of the PC-OC (extradition, mutual legal assistance (MLA) and transfer of sentenced persons) are among the most widely ratified conventions of the Council of Europe (ratified by all 47 member States, as well as non-member States). They also continue to attract interest from third countries: Korea was invited to accede to the conventions on extradition and MLA, while Brazil requested an invitation to accede to the MLA convention. The Convention on the transfer of sentenced persons is the convention of the Council of Europe with the highest number of ratifications by non-member States (17 countries in total).

7. There might be scope to develop the interregional potential of these conventions. There seems to be a tendency at the EU level to negotiate new co-operation agreements (for example, the recent treaty on mutual assistance with Japan). However, such negotiations take time and resources, and result in new sets of rules for practitioners. Thus, it might be more logical to invite suitable third States to accede to the Council of Europe conventions. The PC-OC could discuss if such a development would be desirable, and if so, how it could contribute to the extension of these conventions beyond Europe and what would be the criteria for identifying suitable third countries⁵. The PC-OC could, for instance, consider the feasibility of a Committee of Ministers text (such as a Resolution) clarifying such criteria and the procedure to be followed.

8. The wide ratification of these conventions, the interest from outside Europe, as well as the accumulated practical knowledge about their use within the PC-OC, all attest to their continuing relevance. Furthermore, the instruments of the Council of Europe still constitute, with the exception of the European Arrest Warrant, the basis of co-operation between EU member States. However, it could be worth exploring whether the wide use that is being made of these conventions and their contribution to transnational fight against crime could be rendered more visible. The PC-OC members could for example contribute statistics or estimates on the number of cases treated, where the Council of Europe Conventions are the legal basis.

Normative measures

9. The PC-OC can embark on normative activities in accordance with specific instructions from the CDPC. In the period following the “new start” report, the PC-OC requested the CDPC for authorisation to work on the modernisation of the European Convention on Extradition of 1957. Having been mandated to that effect by the CDPC in June 2007, the PC-OC started its work in this area in November 2007.

10. Since then, the PC-OC negotiated and submitted to the CDPC the Third Additional Protocol to the Convention, complementing it with a simplified extradition procedure. The Protocol was adopted without any significant change by the CDPC, which expressed its appreciation for the quality of the PC-OC's work. At the same time, the PC-OC made significant progress as regards the amendment of other issues proposed in its original request (notably, rule of speciality, lapse of time, communication, language issues), while undertaking some stock-taking exercises on subjects such as compensation issues and the relationship between asylum and extradition procedures. More recently, following the instructions of the CDPC, the PC-OC decided to look more closely at the issue of jurisdiction and its effect on international

⁵ A potential precedent in this respect is the Protocol amending the European Convention on the Suppression of Terrorism, which provides that the CDPC “shall make recommendations to the Committee of Ministers concerning non-member States of the Council of Europe to be invited to accede to the Convention”.

co-operation, which might involve further normative work, including a possible revision of the European Convention on the Transfer of Proceedings in Criminal Matters.

11. The PC-OC recently decided to emphasise the difference of tasks between its plenary and its drafting group (PC-OC Mod), in order to respond to its increasing workload and shorter meetings (6 days in 2009, compared to 7 in 2008). This has streamlined the drafting process and contributed to the efficiency of the normative work of the PC-OC.

12. Normative measures are arguably the most visible aspect of the PC-OC's work, and the quality of the results is widely recognised. One of the key strengths of the PC-OC, and one which sets it apart from other negotiation fora, is the fact that the PC-OC members bring very concrete practical experience and examples to the negotiation table – which is a clear necessity for reviewing Council of Europe instruments which have generated a great deal of casework. The PC-OC could think of ways in which it could fully utilise these strengths in order to define the role of its standard-setting work in the future.

13. One concern about the recent activities of the PC-OC could be that its normative work has taken the best part of its available resources, to the detriment of its practical work. An area where there is a possible overlap between the PC-OC's standard-setting activities and practical guidance could be the commentaries on the Council of Europe conventions: The PC-OC was responsible for the publication of a book on extradition standards, and the preparation of a commentary on the transfer of sentenced persons. It could be a potential priority to review and improve these commentaries on a regular basis, as well as to complete them by extending them to mutual legal assistance (cf. the ongoing activities on a voluntary contribution project) or transfer of proceedings.

14. It is a fact that, despite the adoption of new instruments and introduction of new tools, notably within the EU, international co-operation is an increasingly complex field, not easily accessible for practitioners, such as magistrates, prosecutors, police officers, officials and lawyers, also due to the different levels of co-operation. Furthermore, a reproach often heard in connection with new EU instruments in this field has been that they neglect the practical and guidance aspect, often leaving practitioners to their own devices. If the PC-OC were to reinforce its role of general guidance to practitioners armed with its unique expertise, this could potentially contribute to filling a gap also beyond the Council of Europe.

15. Another issue to be explored is the possibility of reinforcing the role of the PC-OC in interpreting the provisions of the relevant Conventions, possibly by complementing its terms of reference. For this purpose, it has also been suggested to draw inspiration from the Protocol amending the European Convention on the Suppression of Terrorism, which provides that the [CDPC] “shall, at the request of a Contracting State, express an opinion on any question concerning the application of the Convention” (Article 6, para. 2).

Practical measures

16. Starting from 2008, the PC-OC developed databases with basic information on national procedures concerning extradition, MLA and transfer of sentenced persons and made them available on its website. While the great majority of countries submitted the required information, it is unfortunately not yet exhaustive. Before undertaking a renewed effort on completing this information, it might be useful to take stock of the experience of PC-OC members with this information and to evaluate this tool with a view to possible improvements.

17. The PC-OC keeps a list of officials involved in extradition, MLA and transfer cases, which is widely used and which even served as a basis for the establishment of other networks on judicial co-operation. This list has been a practical extension of the network character of the PC-OC. It has been completed more recently by a list of single points of contact, who should act as a national interface when problems are encountered. The PC-OC could evaluate how useful this addition has been and whether it needs to be reinforced.

18. While the PC-OC expressed itself in favour of an e-letter on international co-operation in criminal matters, this e-letter did not materialise owing to the lack of news contributed by PC-OC delegations. The PC-OC could consider how it could encourage its members to contribute on a regular basis to such a venture, taking account of their workload.

19. The PC-OC could also envisage the use of an online forum to exchange information and discuss specific issues in real time. This could also have the added value of leaving a written trace of discussions on practical difficulties, for the benefit of other members not directly involved in a case.

20. Finally, the project on “effective practical tools to facilitate international co-operation in criminal matters” could be mentioned in this context. This project, aiming to develop model forms for mutual legal assistance requests (adapted to the requirements of each Party) and clear guidelines for practitioners for making such requests, goes in the same direction as the work of the PC-OC and seeks to fill a gap caused by the lack of resources at the PC-OC’s disposal based thanks to voluntary contributions. While it is clear that the PC-OC should be involved in this exercise in one way or another, it could be useful for the PC-OC to discuss the modalities of this involvement.

21. Recently, the PC-OC discussed a possible extension of the European Judicial Atlas, hosted by the European Judicial Network, to States Parties to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The Secretariat of the European Judicial Network also expressed its support for this idea, and the Secretariat is looking into ways of facilitating this, possibly also in the context of this project.

Practical problems and friendly settlement of difficulties

22. The value of the PC-OC as a network of practitioners cannot be overestimated. Many practical difficulties are resolved at an early stage through personal contacts within the PC-OC, or thanks to the contact details of practitioners made available by the PC-OC, before they can reach the level of a dispute. However, this contribution of the PC-OC remains largely invisible outside the Committee, as bilateral problems, involving specific cases, are often dealt with successfully in this informal framework, and do not reach the PC-OC plenary. The PC-OC should consider the ways in which this contribution of the PC-OC to the successful implementation of the conventions could be made more tangible and how the PC-OC as a body could contribute to this process, for example by sharing statistics or estimates about such successful initiatives, or by sharing good practices and concrete cases.

23. Due to the abovementioned reasons, the discussions of the PC-OC concerning practical problems are often confined to systemic difficulties concerning the interpretation and application of conventions and multilateral problems. These discussions are often at an intermediate level between dispute settlement in a strict sense and standard-setting: for example, the PC-OC has made proposals to resolve a clear divergence of interpretation regarding the scope of the rule of speciality (including contradictory case-law of high courts in different member States) through the amendments it has recently proposed to the European Convention on Extradition and its explanatory report. This aspect of the PC-OC’s work could also be made clearer.

24. As regards the friendly settlement of difficulties arising from the application of the Conventions when they reach a point where they cannot be resolved bilaterally, a criticism that has been voiced as regards this prerogative of the CDPC in this field is that it is rarely put into practice. This is notably due to the fact that the functioning of the current system, based on the relevant Recommendation⁶ of the Committee of Ministers (see Appendix I), depends on the full co-operation of both parties with the CDPC and has been used very rarely. This could be stopping Parties from bringing such cases to the attention of the relevant committees and creating frustration regarding the implementation of the conventions. The PC-OC could consider proposing to the CDPC the review of the existing Recommendation in order to respond to difficulties identified in the application of the Recommendation.

25. Another option to be considered in this respect is the possible introduction of more binding procedures regarding the resolution of difficulties arising from the application and interpretation of the relevant conventions. Such procedures could institute a 'mediating' role for the PC-OC. As a 'first instance' mediating body, the PC-OC can offer a very valuable 'neutral terrain' for the parties involved. In that respect, the PC-OC could offer a kind of peer review of the problem that is put on the agenda. As mentioned above, the Protocol amending the European Convention on the Suppression of Terrorism gives a clear legal basis for the CDPC to express its opinion on questions brought to its attention by a State Party. As regards arbitration, there are a number of Council of Europe conventions which provide for arbitration procedures of varying degrees of complexity. Some of the relevant provisions in this respect are included in Appendix II.

Conclusion

The following is a summary of different issues, which have been detailed above, that the PC-OC could discuss:

Conventions:

- promotion of accession by third countries;
- measures to make their impact more visible;

Normative measures:

- identification of PC-OC's strengths in order to adapt standard-setting work;
- strengthening of the PC-OC's work on commentaries and guidance to practitioners;

Practical measures:

- evaluation of existing tools to improve their usefulness;
- introduction of an e-letter, an online discussion forum and a judicial atlas;
- PC-OC's involvement in the voluntary contribution project to facilitate mutual legal assistance;

Practical problems and friendly settlement

- measures to affirm the value of the PC-OC as a network;
- clarification of the link between discussion of practical problems and normative measures;
- review of the Recommendation No. R(99)20;
- introduction of more binding procedures regarding the resolution of difficulties.

⁶ Recommendation R(99)20 of the Committee of Ministers to Member States concerning the friendly settlement of any difficulty that may arise out of the application of the council of Europe Conventions in the penal field.

Appendix I

Recommendation R(99)20 of the Committee of Ministers to Member States concerning the friendly settlement of any difficulty that may arise out of the application of the council of Europe Conventions in the penal field

The Committee of Ministers, under the terms of Article 15.b. of the Statute of the Council of Europe,

Having regard to the Council of Europe Conventions in the penal field;

Recognising that through such Conventions it pursues the goals notably of:

- upholding the rule of law;
- promoting human rights;
- fighting for democratic stability in Europe;
- strengthening European legal co-operation in criminal matters
- supporting victims and redressing their rights;
- pursuing the ends of justice by bringing before a court of law those who are accused of having committed a crime;
- promoting the social rehabilitation of offenders.

Desirous of strengthening its ability to pursue such goals in a comprehensive and harmonious fashion;

Convinced that to that effect it is proper to facilitate, in accordance with the guidelines appended, the friendly settlement of any difficulty arising out of the application of any one or more of the Council of Europe Conventions in the penal field;

1. Recommends the governments of member States:

(a) To continue to keep the European Committee on Crime Problems (CDPC) informed through the PC-OC about the application of all the Conventions in the Penal Field and of any difficulty that may arise thereof;

(b) Pending the entry into force of provisions formally extending the CDPC's role in this area to the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters, to accept that the CDPC be called upon to do whatever is necessary to facilitate a friendly settlement of difficulties arising out of the application of those Conventions;

(c) when experiencing difficulties that may be seen as concerning two or more Conventions simultaneously, to assign them jointly to the CDPC;

2. Instructs the Secretary General of the Council of Europe to transmit this Recommendation to the governments of the non-member States which are a Party to any of the above-mentioned Conventions and to the governments of States invited to accede to any such Convention.

Appendix to Recommendation No. R(99) ...

Procedural guidelines for the friendly settlement of difficulties arising out of the application of conventions in the penal field

1. Any request for a friendly settlement should be forwarded in writing to the Secretariat.
2. The Secretariat shall transmit the requests to the Bureau for consideration at the earliest meeting, whether a Bureau meeting or a CDPC plenary session.
3. Where the request is urgent, the Secretariat, in consultation with the Bureau of the CDPC, shall put into motion an urgent procedure.

4. Whenever friendly settlements coincide in time with plenary sessions of the CDPC, they shall be sought within an open-ended working party of the CDPC.
5. Whenever they do not coincide in time with plenary sessions of the CDPC, friendly settlements shall be sought within an ad hoc working party of the CDPC set up and convened to that effect.
6. The members of such an ad hoc working party shall then be:
 - a) persons appointed by the States involved in the difficulties or disputes under review;
 - b) persons designated by the Bureau of the CDPC, amongst:
 - the Heads of Delegation to the CDPC, or their substitutes designated to that effect;
 - persons appointed to that effect by States not members of the Council of Europe yet a Party to one or more of the Conventions in respect of which the difficulties or disputes have arisen;
7. All Heads of Delegation shall be informed of the request and the procedure followed; they shall be allowed to submit written comments;
8. The Chair of the CDPC, or a member of the Bureau, should assume responsibility for and preside over any meetings that might be held in the context of friendly settlements;
9. The number of persons appointed by the States involved, as well as the number of persons appointed by the Bureau of the CDPC, shall be measured against the nature of the difficulties involved and the need to proceed both effectively and efficiently.
10. The State that sets the procedure in motion should put into writing the facts of the case, the difficulties that it is faced with, whether or not it considers the request to be urgent, as well as the aim that it seeks to achieve.
11. The respondent State should likewise put into writing its point of view or any comments that it deems fit.
12. At the end of the procedure, a paper must emerge, stating the facts, the difficulties encountered, as well as suggestions that the CDPC, or in urgent situations the ad hoc working party, wishes to submit to the States involved.
13. Finally, States involved in friendly settlements may be invited to feed back information on what happened as a consequence of the procedures, or following the procedures, in particular where such information might be of relevance to the interests of other States.

Appendix II

Examples of provisions from Council of Europe Conventions concerning Arbitration

Agreement on Illicit Traffic by Sea, implementing article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (ETS No. 156)

Article 34 – Settlement of disputes

1. The European Committee on Crime Problems of the Council of Europe shall be kept informed of the interpretation and application of this Agreement.
2. In case of a dispute between Parties as to the interpretation or application of this Agreement, the Parties shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems, to an arbitral tribunal whose decisions shall be binding upon the Parties, mediation, conciliation or judicial process, as agreed upon by the Parties concerned.
3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or on any later date, by a declaration addressed to the Secretary General of the Council of Europe, declare that, in respect of any dispute concerning the interpretation or application of this Agreement, it recognises as compulsory, without prior agreement, and subject to reciprocity, the submission of the dispute to arbitration in accordance with the procedure set out in the appendix to this Agreement.
4. Any dispute which has not been settled in accordance with paragraphs 2 or 3 of this article shall be referred, at the request of any one of the parties to the dispute, to the International Court of Justice for decision.
5. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it does not consider itself bound by paragraph 4 of this article.
6. Any Party having made a declaration in accordance with paragraphs 3 or 5 of this article may at any time withdraw the declaration by notification to the Secretary General of the Council of Europe.

Appendix to the Agreement on Illicit Traffic by Sea

1. The Party to the dispute requesting arbitration pursuant to Article 34, paragraph 3, shall inform the other Party in writing of the claim and of the grounds on which its claim is based.
2. The Parties concerned shall establish an arbitral tribunal.
3. The arbitral tribunal shall consist of three members. Each Party shall nominate an arbitrator. Both Parties shall, by common accord, appoint the presiding arbitrator.
4. Failing such nomination or such appointment by common accord within four months from the date on which the arbitration was requested, the necessary nomination or appointment shall be entrusted to the Secretary General of the Permanent Court of Arbitration.
5. Unless the Parties agree otherwise, the tribunal shall determine its own procedure.
6. Unless otherwise agreed between the Parties, the tribunal shall decide on the basis of the applicable rules of international law or, in the absence of such rules, *ex aequo et bono*.
7. The tribunal shall reach its decision by a majority of votes. Its decision shall be final and binding.

European Convention on the Suppression of Terrorism (ETS No. 90) as amended by its amending Protocol (ETS No. 190)

Article 11

1. Any dispute between Contracting States concerning the interpretation or application of this Convention, which has not been settled either in the framework of Article 10.e or by negotiation, shall, at the request of any Party to the dispute, be referred to arbitration. Each Party shall nominate an arbitrator and the arbitrators shall nominate a referee.
2. In the case of disputes involving Parties which are member States of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the European Court of Human Rights at the request of the other Party.
3. In the case of disputes involving any Party which is not a member of the Council of Europe, where a Party fails to nominate its arbitrator in pursuance of paragraph 1 of this article within three months following the request for arbitration, an arbitrator shall be nominated by the President of the International Court of Justice at the request of the other Party.
4. In the cases covered by paragraphs 2 and 3 of this article, where the President of the Court concerned is a national of one of the Parties to the dispute, this duty shall be carried out by the Vice-President of the Court, or if the Vice-President is a national of one of the Parties to the dispute, by the most senior judge of the Court who is not a national of one of the Parties to the dispute.
5. The procedures referred to in paragraphs 2 or 3 and 4 above apply, *mutatis mutandis*, where the arbitrators fail to agree on the nomination of a referee in accordance with paragraph 1 of this article.
6. Where a majority cannot be reached, the referee shall have a casting vote. The tribunal's judgment shall be final.

European Convention on Transfrontier Television (ETS No. 132), amended according to the provisions of the Protocol (ETS No. 171)

CHAPTER IX – SETTLEMENT OF DISPUTES

Article 25 – Conciliation

1. In case of difficulty arising from the application of this Convention, the parties concerned shall endeavour to achieve a friendly settlement.
2. Unless one of the parties concerned objects, the Standing Committee may examine the question, by placing itself at the disposal of the parties concerned in order to reach a satisfactory solution as rapidly as possible and, where appropriate, to formulate an advisory opinion on the subject.
3. Each party concerned undertakes to accord the Standing Committee without delay all information and facilities necessary for the discharge of its functions under the preceding paragraph.

Article 26 – Arbitration

1. If the parties concerned cannot settle the dispute in accordance with the provisions of Article 25, they may, by common agreement, submit it to arbitration, the procedure of which is provided for in the appendix to this Convention. In the absence of such an agreement within six months following the first request to open the procedure of conciliation, the dispute may be submitted to arbitration at the request of one of the parties.
2. Any Party may, at any time, declare that it recognises as compulsory, ipso facto and without special agreement in respect of any other Party accepting the same obligation, the application of the arbitration procedure provided for in the appendix to this Convention.

APPENDIX to the Europe Convention on Transfrontier Television

Arbitration

1 A request for arbitration shall be notified to the Secretary General of the Council of Europe. It shall include the name of the other party to the dispute and the subject matter of the dispute. The Secretary General shall communicate the information so received to all the Parties to the Convention.

[...]

3 The arbitration tribunal shall consist of three members: each of the parties to the dispute shall appoint one arbitrator; the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of either of the parties to the dispute, nor have his usual place of residence in the territory of either of those parties, nor be employed by either of them, nor have dealt with the case in another capacity.

4 If one of the parties has not appointed an arbitrator within one month following the communication of the request by the Secretary General of the Council of Europe, he shall be appointed at the request of the other party by the President of the European Court of Human Rights within a further one-month period. If the President of the Court is unable to act or is a national of one of the parties to the dispute, the appointment shall be made by the Vice-President of the Court or by the most senior judge to the Court who is available and is not a national of one of the parties to the dispute. The same procedure shall be observed if, within a period of one month following the appointment of the second arbitrator, the Chairman of the arbitration tribunal is not designated.

5 The provisions of paragraphs 3 and 4 shall apply, as the case may be, in order to fill any vacancy.

6 Two or more parties which determine by agreement that they are in the same interest shall appoint an arbitrator jointly.

7 The parties to the dispute and the Standing Committee shall provide the arbitration tribunal with all facilities necessary for the effective conduct of the proceedings.

8 The arbitration tribunal shall draw up its own Rules of Procedure. Its decisions shall be taken by majority vote of its members. Its award shall be final and binding.

9 The award of the arbitration tribunal shall be notified to the Secretary General of the Council of Europe who shall communicate it to all the Parties to this Convention.

10 Each party to the dispute shall bear the expenses of the arbitrator appointed by it; these parties shall share equally the expenses of the other arbitrator, as well as other costs entailed by the arbitration.