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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**

**Proposals by Mr Vladimir ZIMIN**  
**(the Russian Federation)**

**related to the modernisation of Articles 1, 2 and 3**  
**of the European Convention on Extradition**

## Article 1 Obligation to extradite

### The current version:

The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.

### The proposed version:

The Contracting Parties undertake to surrender to each other, subject to the provisions laid down in this Convention, any person who is **wanted** by the competent authorities of the requesting Party in order **to prosecute** and/or **try** him/her for an offence or to execute a sentence or detention order.

### *Explanatory note:*

The main idea of the proposed new version of Article 1 is to be more precise in terms as it is done in relation to Article 14, para 1 as to be amended by Article 3 of the future 4<sup>th</sup> Protocol (in relation to the notion "to proceed against"). Besides it's underlined that in both cases the person concerned should be wanted.

## Article 2 Extraditable offences

### The current version:

1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made **in the territory of the requesting Party**, the punishment awarded must have been for a period of at least four months.

2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the requested Party shall also **have the right to grant extradition** for the latter offences.

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### The proposed version:

1. Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have or a detention order has been delivered **by the competent authorities of the requesting Party**, the punishment awarded must have been for a period of at least four months.

2. If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfil **only** the condition with regard to the amount of punishment which may be awarded, the requested Party **shall also grant extradition** for the latter offences.

### *Explanatory note:*

The second sentence of Article 2, para 1 deals with a situation when a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, although these acts may be also delivered by the competent authorities of the requesting Party in the territory of

other State (for instance, on the military base or rented foreign territory such as the Russian “cosmodrome” at Baikonur in Kazakhstan). That’s why it’s proposed to speak about decisions delivered not in the territory of the requesting Party but by the competent authorities of the requesting Party.

In relation to paragraph 2 it seems to be a proper thing and time to make a step further and to inscript the obligation to grant extradition for the offences mentioned in this paragraph.

### **Article 3 Political offences**

#### **The current version:**

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.
3. The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed to be a political offence for the purposes of this Convention.
4. This article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international convention of a multilateral character.

#### **The proposed version:**

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.
3. For the purposes of this Convention, the requested Party shall not regard as political offences or offences connected with political offences:
  - a. the taking or attempted taking of the life of a Head of State or government or a member of his/her family; and
  - b. the acts or omissions provided for in the international treaties to which both the requested Party and the requesting Party are Participants.
4. This Article shall not affect any obligations which the Contracting Parties may have undertaken or may undertake under any other international treaty.

#### ***Explanatory note:***

1. In relation to the proposed amendments to paragraph 3 it should be mentioned that there is no internationally accepted (at universal and even regional level) legal definition of such notions widely used in the European conventions in the penal field as a “political offence” and “offence connected with a political offence”. Besides almost all States in the world, including the Russian Federation, have no legal definition of such notions in their own national legislation.

Such legal lacunae may cause and in practice often causes disputes between different States concerned, which arise out of the interpretation and application of the corresponding Conventions. Such

disputes may lead to deterioration of general relations between the States involved and “spoil” the whole legal co-operation between them because of applying reciprocity “in retaliation”.

No secret that many persons accused of committing crimes (terrorist acts, drug offences, organized crimes, money laundering, etc) say that there are political motives behind their criminal activities or that they are criminally prosecuted for their political, religious or other beliefs.

I do believe that nowadays the “political offence” clause must remain in the European conventions in the penal field and that it’s impossible and of no need to give a positive legal definition of a “political offence” and an “offence connected with a political offence”. But I suppose that it’ll be very useful and practically achievable to limit the possibility of abusing the “political offence” clause, by excluding from offences that might be considered as political offences and offences connected with a political offence, the offences provided for in the international treaties to which both the requested Party and the requesting Party are Participants. These offences pose international danger.

Similar approach of the so-called “negative” definition of a “political offence” was used in many bilateral treaties concluded in the XIX century between some States in Europe, including Russia (in relation to the murder and attempt to murder of heads of State and members of their families). Nowadays there are plenty of provisions based on the said approach (but provisions of particular and not a general nature) in the multilateral treaty practice, both regional and universal (e.g. the European Convention on Extradition, Article 3 (3); the 1975 Additional Protocol to the European Convention on Extradition, Article 1; the 2003 Protocol amending the European Convention on the Suppression of Terrorism, Article 1; the 1997 International Convention for the Suppression of Terrorist Bombings, Article 11; the 2005 Council of Europe Convention on the Prevention of Terrorism, Article 20 (1).

2. As regards paragraph 4, it seems appropriate to exclude words “of a multilateral character” as restrictive.

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