



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 24/11/2011
[PC-OC/Documents2011 / PC-OC (2011) 27]
<http://www.coe.int/tcj/>

PC-OC (2011) 27

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

List of decisions taken at the 61st meeting of the PC-OC
Under the Chairmanship of Mr Per Hedvall (Sweden)

Strasbourg
22 - 24 November 2011

1. Consideration of the replies to the questionnaire on jurisdiction and transfer of proceedings and follow-up

The PC-OC considered the replies to the questionnaire as well as the follow-up to be given and decided:

- to endorse the proposal made by the PC-OC-Mod to develop practical guidelines, if appropriate contained in a legal instrument, in respect of transfer of proceedings inter alia in application of the European Convention on the Transfer of Proceedings in Criminal Matters, of Article 21 of the European Convention on Mutual Assistance in Criminal matters and Article 6, paragraph 2 of the European Convention on Extradition. The guidelines would inter alia address the following issues:
 - bilateral consultation between the requesting and the requested states before, during and after (feedback) the submission of requests for cooperation;
 - proportionality of the case with regard to the procedure initiated and the appropriateness to submit the request;
 - ways to accelerate and facilitate procedures so as to avoid impunity while lowering costs and efforts involved (eg by suggested time limits to react to a request ;development of a model form to submit requests, including a coversheet and/or a summary; reconsider translation requirements and burden of costs)
 - ways to deal with differences in national legislation as regards extraterritorial jurisdiction, admissibility of evidence, and mandatory and discretionary prosecution
- to instruct its working group, the PC-OC Mod, to elaborate draft guidelines for consideration at its next plenary meeting;
- to keep the CDPC informed on future developments.

2. Presentation and content of the PC-OC website

The PC-OC welcomed the information provided by the Secretariat about the ongoing efforts to improve the presentation and content of the PC-OC website and decided:

- to ask the Secretariat to invite delegations to update country information on the operation of the conventions on extradition, mutual legal assistance and transfer of sentenced persons posted on the public website;
 - With regard to the List of competent authorities in respect of Articles 13 and 15.3 of the European Convention on Mutual Assistance in Criminal Matters
- to instruct the Secretariat to post the list on the PC-OC's collaborative workspace and to invite delegations to update and/or complete the list at regular intervals;
 - With regard to the draft list of relevant case law of the European Court of Human Rights
- to instruct its working group, the PC-OC Mod, to review the draft list by making it more user-friendly, by introducing 'catchphrases' and by focussing on the specific needs of practitioners;
- to instruct the Secretariat to look into the feasibility and most appropriate way of posting the case law on the website;.
 - With regard to the proposed useful links

Further to the proposal by the PC-OC Mod, the Secretariat invited delegations to submit proposals to enrich the PC-OC website with links to websites of relevance to the work of the PC-OC. The PC-OC considered the list of links proposed, agreed that it would be useful to create links to websites of relevant international governmental organisations and courts as well as to relevant governmental websites and decided:

- to instruct the Secretariat to amend the list of proposed websites in the light of the discussions held and look into the feasibility and most appropriate way of posting them on the website;
- to invite delegations to propose links to relevant governmental websites.

3. Draft proposals for practical measures to facilitate the application of conventions on international cooperation in criminal matters

The PC-OC considered the draft proposals as amended by the PC-OC Mod (Document PC-OC (2011) 04 rev2) and decided:

- to adopt with minor amendments the proposals for these practical measures affecting working methods of the PC-OC and to inform the CDPC;
- to designate as rapporteurs referred to in the practical measures, Ms Barbara Goeth-Flemmich (Austria) on issues regarding mutual legal assistance, Mr Eugenio Selvaggi (Italy) on transfer of sentenced persons and Mr Erik Verbert (Belgium) on extradition.

The PC-OC furthermore considered the information sheet on the PC-OC as amended by the Secretariat in the light of the discussions held in the PC-OC-Mod (Document PC-OC (2011) 08 rev) and decided:

- to instruct its working group, the PC-OC Mod, to finalise the information sheet in the light of the proposals made and to make proposals for its publication and dissemination.

4. Consideration of the feasibility of proposing simplified procedures for the amendment of the European Treaties on co-operation in criminal matters

The PC-OC considered the reflection paper prepared by the Secretariat (Document PC-OC (2011) 17), supported the conclusions of the PC-OC-Mod on the feasibility of such procedures in principle and decided:

-to reconsider their usefulness on a case by case basis in future binding instruments to be drafted.

5. Possibilities to encourage and facilitate the review of existing declarations and reservations to the European Treaties on co-operation in criminal matters

The PC-OC took note of the background document prepared by the Secretariat (PC-OC(2011)18 restricted) as well as of the fact that the Secretariat is presently involved in conducting a comprehensive review of all Council of Europe conventions, whereby the review of existing declarations and reservations is taken into account.

The PC-OC therefore decided:

- to endorse the proposal by the PC-OC-Mod to postpone discussion of this item until the outcome of this review exercise.

6. Practical problems and concrete cases concerning the implementation of conventions

a. The PC-OC considered the feasibility and necessity of collecting technical information from Parties to the Second Additional Protocol of the Convention on Mutual Legal Assistance in Criminal Matters concerning the use of hearings by video conference in the light of the background documents (PC-OC (2011)12 and PC-OC (2011) 20 restricted) and proposals for a short questionnaire prepared by Ms Merja Norros (Finland) and decided:

- to agree on the usefulness of sending out a questionnaire to collect this information;
- to instruct the Secretariat to finalise the questionnaire on technical aspects of videoconferences as agreed during the plenary, to prepare a short introduction and to send it to all delegations;
- to instruct the PC-OC Mod to examine the replies received and make a proposal for follow up.

b. Further to the request made by the CDPC during its 60th meeting, the PC-OC considered ways to ensure the authenticity of communications forwarded by electronic means (as referred to in Article 6 of the Draft Fourth Additional Protocol to the European Convention on Extradition) and decided:

- to inform the CDPC that following an exchange of views between delegations it appeared that some member states have the possibility to ensure authenticity of such communications by electronic signature but that experience was very limited as regards trans-border communications. This however was not regarded as an obstacle to judicial cooperation.

c. On the basis of a discussion paper (Document PC-OC(2011) 24) prepared by Mr Jakub Pastuszek (Czech Republic) the PC-OC had an exchange of views on possible consequences of the draft EU Directive on common procedures for granting and withdrawing international protection status (asylum) on extradition procedures. The PC-OC agreed that this was an important issue and decided:

- to closely follow further developments on this issue.

d. On the basis of a discussion paper (Document PC-OC (2011) 09rev) prepared by Mr Eugenio Selvaggi (Italy) the PC-OC had an exchange of views on the relationship between extradition and expulsion (disguised extradition), and decided:

- to continue discussion on this issue at its next meeting and to instruct the PC-OC Mod to prepare this discussion by proposing a list of concrete questions taking into account the mandate of the PC-OC;
 - e. On the basis of a discussion paper (Document PC-OC (2011)19) prepared by Mr Eugenio Selvaggi (Italy) the PC-OC had an exchange of views on “dual criminality in abstracto or in concreto”, and decided:
 - to instruct the Secretariat to reflect the discussions held in a draft note;
 - to instruct the PC-OC Mod to consider this draft note in view of its adoption by the PC-OC and publication on the website as an information document for practitioners.
 - f. At the initiative of the German delegation, the PC-OC had a discussion on the issue of “in absentia cases” in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition and considered the draft questionnaire (Document PC-OC (2011) 22) prepared on this issue further to the PC-OC Mod meeting. The PC-OC agreed that it would be important to further develop the questionnaire and decided:
 - to invite delegations to send written proposals for the development of the questionnaire to the Secretariat;
 - to instruct the Secretariat to amend the draft questionnaire in the light of the proposals received;
 - to instruct the PC-OC-Mod to finalise the questionnaire for consideration by the PC-OC plenary at its next meeting.
 - g. The Swedish delegation informed the PC-OC about a recent judgment of the European Court of Human Rights (application n° 37075/09) concerning the extradition of a Rwandese national to Rwanda. The plenary took note of this case and considered during the discussion the question whether a decision to extradite remains valid when the person concerned absconds before the extradition decision is executed. This seemed to be the case in a majority of member States. The plenary also reflected on the procedure in the Court of Human Rights in particular with regard to extradition cases.
 - h. On the basis of a discussion paper (Document PC-OC (2011)26) prepared by Ms Barbara Goeth-Flemmich (Austria) the PC-OC had an exchange of views on questions related to the application and interpretation of Article 16 of the European Convention on Extradition (provisional arrest), and agreed that Article 16 provides a legal basis for provisional arrest. The majority of delegations agreed that, when considering a specific case, the requested state should be able to find sufficient grounds to establish that the conduct of the person sought constitutes a criminal offence under its national criminal law.
7. **Follow-up to be given to the following documents proposed by Mr Miroslav Kubiček (Czech Republic)**
- **Consolidated document reflecting the applicable provisions of the European convention on Extradition, the additional Protocols thereto and the draft fourth additional Protocol**
 - **Consolidated document reflecting the applicable provisions of the European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols**

The PC-OC considered the follow up to be given to the consolidated versions of the Council of Europe treaties on extradition and on mutual assistance in criminal matters, expressed its gratitude to Mr Kubiček for this important work and decided:

- to approve publication on the website of documents PC-OC (2011)7 rev and PC-OC(2011)15 rev containing the consolidated texts mentioned above and to have them translated into French;

- to approve publication of document PC-OC (2011)7 rev2 as soon as the Fourth Additional Protocol to the Extradition Convention would have been adopted;
- to ask the Secretariat to explore possibilities of translating the introductory note to these documents also in non-official languages of the Council of Europe.

8. **Election of the Chair and the vice-Chair of the Committee**

The PC-OC re-elected Mr Per Hedvall (Sweden) as its Chair and Mr Erik Verbert (Belgium) as its vice-Chair for their second and last term of one year.

9. **Composition of the PC-OC Mod**

Considering the terms of reference of the PC-OC for 2012 and 2013 adopted by the Committee of Ministers and the budget allocated, the PC-OC decided to maintain its working Group (PC-OC Mod) in order to execute the tasks entrusted to it in view of the next plenary meeting. It was decided that the composition of the PC-OC Mod will be reconsidered at the next plenary session.

10. **Points for information and any other business**

The PC-OC took note of

- the information provided by the Secretariat on the reform in the structure of the Council of Europe Secretariat, including in particular the nomination of Mr Ivan Koedjikov as Head of the Action against crime Department;
- the new Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods adopted by the Committee of Ministers;
- the terms of reference of the PC-OC for 2012 and 2013 as adopted by the Committee of Ministers;
- the opinion of the CDPC on Parliamentary Assembly Recommendation 1953(2011) on “the obligation of member states and observer states of the Council of Europe to co-operate in the prosecution of war crimes”;
- the information provided by Norway, that further to the damages occurred by the dramatic events on 22 of July to its Ministry of Justice, the Ministry had moved to new premises but that the postal address remained unchanged. It furthermore noted that correspondence received between 17 and 25 July might have been lost by the damages and that delegations might wish to check that requests sent in this period have been received;
- the information provided by Iceland that as of 1 January 2011 a new Ministry of the Interior had been created, merging the former Ministry of Justice, and all its tasks. Those related to extradition, mutual legal assistance and transfer of sentenced persons now fall under the Department of Public Security who moved to new premises within the new Ministry;
- the information provided by the Secretariat on the possibility created under the future terms of reference of the PC-OC to invite non member States of the Council of Europe, who are Parties to one of the conventions on cooperation in criminal matters, to participate in one of its meetings and decided to invite South-Africa for an exchange of views at a future meeting.

The PC-OC noting that its administrative assistant, Ms Marose Bala-Leung, will leave the Organisation as from 2012, expressed its gratitude for the excellent services she rendered to the PC-OC during numerous years and its best wishes for her future.

11. **Dates of the next meetings**

The PC-OC decided to have its plenary meetings in 2012 from 9 to 11 May and from 13 to 15 November.

The meetings of the PC-OC Mod will take place on 22 and 23 March and on 27 and 28 September 2012.