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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)**

**MLA: JUST A MATTER OF STATES?**

**DISCUSSION PAPER PREPARED BY MR ERIK VERBERT (BELGIUM)**

Mutual Legal Assistance – in view of the trial – person extradited / surrendered - fundamental rights  
- (alleged) violation – seeking remedy (to stop ongoing MLA) – character of MLA (and extradition) –  
interstate cooperation versus or and individual rights

This remark / question is about the legal character of international cooperation in criminal matters, more specifically mutual legal assistance in criminal matters.

The situation is as follows: A person is being investigated / prosecuted in state A. During the ongoing prosecution, the person also becomes a suspect in State B. Between both states (and others) a series of MLA-requests is being exchanged. The person is ultimately being prosecuted, tried and sentenced in State A. Later on state B charges the person as well and requests the extradition for the purpose of prosecution. The extradition is granted and finally the surrender takes place. During and after the extradition proceedings, a new batch of MLA-requests are being transmitted to state A in order to prepare the trial in state B.

After the surrender, the person starts civil proceedings to stop the ongoing MLA-process, claiming that the continued flow of evidence to state B amounts to a violation of fundamental rights.

#### Questions

1. Suppose that the ECtHR did find the *extradition* of the person in violation with the Convention, which means that the person's claim (to stop the ongoing MLA-process) is based upon the argument that any further MLA will contribute to the violation or even the realization of the existing risk to a violation in state B. In other words: the evidence that is being provided by state A will help to assure a conviction in state B and thus the violation of the Convention. Remark: The ECtHR was never called upon to decide on any matter re. MLA, only the extradition.
2. Would the existence of a (final) ECtHR judgment (on the extradition issue) make a difference - (insofar) the person's request is based upon the judgment?
3. Suppose that the court in state A after having heard the arguments of the person decides that it has no jurisdiction to decide on the matter since MLA is interstate cooperation and thus outside the realm of the judiciary.

4. Suppose that, also on the basis of the evidence provided by state B, the person is indeed being convicted and sentenced in a way that amounts to the confirmation of the violation that was established by the ECtHR. Would this enable the person to seek damages?
5. Finally: would it make a difference if state B is a CoE member state or a Third State?

E.V.