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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

**Questionnaire concerning judgments *in absentia* and the possibility of retrial
as adopted by the PC-OC plenary during its 63rd plenary session**

During its 61st meeting the PC-OC discussed a draft questionnaire concerning judgments *in absentia* and the possibility of retrial in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition. The PC-OC agreed that it would be important to develop further the questionnaire and decided:

- to invite delegations to send written proposals on the development of the questionnaire to the Secretariat;
- to instruct the Secretariat to amend the draft questionnaire in the light of proposals received;
- to instruct the PC-OC Mod to finalise the draft questionnaire for consideration by the PC-OC plenary at its next meeting.

The Secretariat received proposals from the following delegations: Denmark, Finland, Germany, the Netherlands, the Russian Federation and Ukraine.

During its 62nd meeting, the PC-OC considered the draft questionnaire proposed by the PC-OC Mod, as well as the draft questionnaire proposed by the German delegation. The PC-OC considered that the questionnaire should be user-friendly and as short as possible, and result oriented, allowing for an optimal use of the replies. While a majority in the PC-OC was in favour of the shorter questionnaire elaborated by the PC-OC Mod, there was also support for the comprehensive and user-friendly approach of the German proposal. It was suggested that an attempt should be made to elaborate on a questionnaire that would combine these qualities. The PC-OC decided to:

- instruct the PC-OC Mod to finalise the questionnaire in the light of the comments made and submit it to the PC-OC plenary for adoption.

The PC-OC Mod finalised the questionnaire during its 14th meeting on 26-28 September 2012. The PC-OC plenary adopted the questionnaire as proposed by the PC-OC mod during its 63rd plenary session (13-15 November 2012).

Questionnaire concerning judgments in absentia and the possibility of retrial

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In absentia judgments

1. Is it possible in your state to issue a judgment *in absentia* within the scope of Article 3 of the Second Additional Protocol of the European Convention on Extradition or in similar cases?

If so, what are the legal conditions according to your law and/or in your legal practice?

If there are more types of such judgments or *in absentia* proceedings, please provide information on each of them.

2. Are the following decisions according to your domestic law considered as decisions in absentia? (multiple responses possible)

- All decisions rendered in the absence of the person concerned at trial
- Decisions rendered in the absence of the person concerned but who was defended by a legal counsellor at the trial:
 - only if the counsellor had been given a mandate by the person concerned;
 - regardless of whether the person was defended by a duty counsellor appointed by the court with no contact to the person concerned.
- Decisions rendered in the absence of the person concerned who afterwards
 - has expressly stated that he or she does not contest the decision;
 - did not request a retrial¹ within the applicable time frame.
- Other decisions (please describe):

Summons

3. Does your domestic law provide for the notification of the person concerned regarding the scheduled date and place of the trial which resulted in the decision? If so, please describe the procedure (e.g. summons in person and/or by other means; official information; etc.).

4. Does your domestic law provide for the following safeguards with regard to the notification of the person concerned about the scheduled date and place of the trial? (multiple responses possible)

- The person concerned is informed in such a manner that it is unequivocally established that he or she is aware of the scheduled trial;
 - The person concerned is informed in a language that he or she understands;
 - The person concerned receives information in due time meaning sufficiently in time to allow him or her to participate in the trial and to effectively prepare and exercise his or her right of defence;
- If so, please provide information as to the time limit:

¹ “Retrial” is used as a generic term without prejudice to the proceeding chosen by the legal systems of the States. The wording follows the linguistic use of the European Court of Human Rights.

The scheduled date of the trial may for practical reasons initially be expressed as several possible dates within a short period of time;
If so, please describe the regulation:

The summons contains information or the person is separately informed that a decision may be handed down even if he or she does not appear for the trial;
 Other safeguards (please, describe):

Legal counsel

5. What guarantees does the law of your state provide concerning the right to a legal counsel for the accused when he or she is not present during the trial?

6. Does your domestic law provide for the possibility that the person concerned waives his or her right to appear and defend him/herself at trial, explicitly or implicitly, through his or her conduct? If so, does your domestic law provide for the possibility that the person concerned, who has waived his or her right to appear, is defended at the trial by a legal counsellor to whom he or she has given a mandate?

Retrial (criteria and conditions)

7. Does the law of your state provide for a possibility of a retrial in case of a judgment *in absentia*? If so, what legal conditions (e.g. *ex officio* or only on request of the person concerned, deadlines etc.) need to be met for the retrial to be granted? If there are more types of such judgments or *in absentia* proceedings, please provide information on each of them.

8. If a retrial needs to be requested by the convicted and sentenced person and/or granted by a court or other authority, please provide information on the procedure (including the deadline for filing such a motion and the start date of this deadline).

9. What are the legal conditions for a valid service (notification) of the judgment *in absentia* in terms of appeal or retrial procedures?

10 What are the consequences of service of the judgment *in absentia* in terms of appeal or retrial procedures?

11 Is the person concerned informed about his or her right to a retrial and, where applicable, about the specific conditions to be met?

No

Yes (multiple responses possible)

- In the summons to trial;
- With the service of the judgment *in absentia*;
- Including information on any deadline for requesting retrial (if applicable);
- In a language that he or she understands;
- In another way (please, describe)

12. Is the person concerned entitled to participate in the retrial?

13. Is the retrial considered according to your domestic law as a new trial meaning the trial starts anew with all possible appellate remedies (e.g. as if the decision rendered in the absence of the person concerned never existed) or is it rather considered as an extraordinary remedy?

14. During the retrial, does your domestic law provide for a fresh determination of the merits of the charge, in respect of both law and facts, including possible new evidence?

15. Does your domestic law provide for the possibility that the original decision rendered in the absence of the person concerned is reversed or changed?

- No;
 Yes, but only in favour of the defendant;
 Yes, in favour but also to the detriment of the defendant;
 There are other limitations (please, describe)

16. Does the retrial or the request of a retrial by the person concerned suspend the execution of the decision rendered in the absence of the person concerned?

17. Is there a time limit within which the retrial has to (re)start?

18. If the person concerned has not been personally served with the decision before his or her surrender, when will the person concerned receive a copy of the decision (if possible, please provide an approximate time frame)? Will the person concerned receive such a copy in a language that he or she understands?

19. If the person concerned, after being surrendered, has exercised his or her right to a retrial, is the detention of the person considered as an enforcement of the decision rendered *in absentia* or as provisional detention?

20. In both cases, is the detention of that person awaiting a retrial reviewed before the retrial proceedings are finalised? (Multiple responses possible)

- No
 Yes, on a regular basis
 Yes, upon request of the person concerned.
 Other:

21. If so, does such a review include the possibility of suspension or interruption of the detention?

In absentia as a ground for refusal to extradite (i.e. as the requested state)

22. Does your state extradite persons for the purpose of carrying out sentences or detention orders imposed by decisions rendered in the absence of the person concerned? If so, please describe the regulation (or identify the convention or legal instrument that you would apply). Does the legislation of your state provide for such a ground for refusal to extradite a person for the purposes of execution of a sentence rendered *in absentia* of this person? If so, is it an imperative (mandatory) or discretionary (facultative) ground for refusal?

23. Do you understand Article 3 of the Second Additional Protocol to the European Convention on Extradition as follows: if the requesting party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence, it means that:

- the person claimed has an automatic (i.e. without the need to make any further request) or semiautomatic (i.e. the person has to make a request but the request cannot be denied by the authorities) right to a retrial or
- the person concerned only has the right to the possibility of a retrial being considered by the requesting state?
- or do you have a different interpretation of Article 3 (please, describe)

24. What legal conditions need to be met according to the legislation and/or legal practice of your state with regard to the clause “minimal rights of defence” (within the meaning of Article 3 of the Second Additional Protocol to the European Convention on Extradition)?

The information provided will be compiled by the Secretariat into a comprehensive document that will be published at the public website of the PC-OC among the tools for implementation in the extradition section. The replies will also serve as a background for further discussions by the PC-OC and PC-OC Mod on the topic of *in absentia* judgments, extradition and guarantees to be provided under Article 3(1) of the Second Additional Protocol to the European Convention on Extradition.