

COUNCIL OF EUROPE



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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**

**ISSUES CONCERNING EXTRADITION**

**Refusal to extradite, application of alternatives to detention**

**Questions raised by Ms Tatiana SHORSTKA (Ukraine)**

I. In Ukraine a decision to extradite a person may be appealed to the court of the 1-st and 2-d instance by the person, his defence counsel or legal representative.

However, in case of refusal to extradite a person from Ukraine there is no rules to appeal such a decision by a Requesting State, as well as such possibility is not envisaged by the European Convention on Extradition (1957) in case a Requested State refuses to extradite a person upon the request of Ukraine as a Requesting State.

In this connection, it seems useful for the practitioner, to gather information about the national rules and practice of the State on that issue. For example, by answering on the questions:

1. Does your domestic legislation envisage the possibility to appeal the decision of a Requested State on refusal to extradite a person by a Requesting State?

1.1. If yes, please, state the conditions for and give a short description of the modalities of appealing by a Requesting State the decision on refusal.

2. Does your domestic legislation provide for a possibility of participation of a Requesting State's representative in criminal proceedings of a Requested State on extradition procedure?

2.1. If yes, please, provide a short description of requirements for a Requesting State to ensure its representation in the proceedings.

2.2. If no, does the Central Authority of a Requested State represent the Requesting State in criminal proceedings?

II. According to the CCP of Ukraine, if existing guarantee the prevention of an escape of a person and ensure his extradition, the investigative judge may apply to such a person a prevention measure other than keeping in custody (extraditional arrest). In Ukraine there are such measures of restraint, other than keeping in custody: personal commitment; personal warranty; release on bail and house arrest.

1. How often are the alternatives to detention applied during consideration of extradition cases in your country? What criteria and conditions should be met for application of the alternative to detention?

2. At what stage of consideration of an extradition case the alternative to detention may be applied:

- before receiving a request for extradition and/or
- after receiving a request for extradition and/or
- before taking the decision to extradite a person and/or
- after taking the decision to extradite a person and/or
- during actual surrender of a person etc?

3. How does the Requested State ensure the prevention of an escape of a person, concerning whom the alternative to detention has been applied, from the competent authorities of the Requested State in light of consideration of an extradition case.