

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 09/02/2018
[PC-OC Mod/DOCS2018/PC-OC Mod(2018)03]
<http://www.coe.int/tcj>

PC-OC Mod(2018)03
English only

EUROPEAN COMMITTEE ON CRIME PROBLEMS

(CDPC)

COMMITTEE OF EXPERTS

ON THE OPERATION OF EUROPEAN CONVENTIONS

ON CO-OPERATION IN CRIMINAL MATTERS

(PC-OC)

Proposals for subjects to be covered at the special session on extradition during the 74th plenary meeting of the PC-OC

Eugenio Selvaggi (Italy)

I take into consideration the fact that the Session will be articulated on two sections: 1. substantive issues; 2. procedural/practical/operational issues. I believe that as for the next Mod meeting we will take benefit of the proposals that have possibly been made by that time.

However, I would like to make 2 or 3 points that should be taken into account, in my opinion.

SUBSTANTIVE ISSUES

1. What is the scope of extradition in the Third Millennium, taking into account :

- a. transnational crime and need for transnational justice;
- b. the fact that people move more frequently than in the fifty years ago;

2. Does nationality remains the red line that cannot be trespassed or should we consider that in view of globalization we do require a fresh reflection on that? Any idea on how to set up obligations as to *aut dedere aut iudicare*, including an ad hoc MLA so to allow the State where the crime had been committed to pursue the ends of justice?

PROCEDURAL/OPERATIONAL ISSUES

1. Should we invite a judge of ECHR? (Not necessarily and if so, not too long speech, please). I would strongly suggest to invite Advocate general BOT to speak on Petruhhin. I know that ECJ might be interesting for EU MS but it is also true that the Petruhhin case does rely to relations with other States and those other States want to understand to what extent Petruhhin decision will apply.

2. It might be interesting also to elaborate a bit on the following issue: relations between confidentiality of information provided to INTERPOL in view of extradition and the need respect individual and defense rights. And what if the State that requests the red notice asks specifically for confidentiality.

Vladimir Zimin (Russian Federation)

In relation to the special session devoted to the 60-th anniversary of the European Convention on Extradition I'd like to propose 2 problematic issues:

- 1) diplomatic assurances (treaty and non-treaty requirements put forward by requested states before requesting states) – legal grounds, varieties, national bodies authorized to provide assurances, principle of reciprocity, case-law of ECtHR, etc.;

I think that topic 1 is very important because of the widespread practice of diplomatic assurances (even for the EU member states after the decision of the CEC in Luxembourg, related to the European Arrest Order and prison conditions in some East and Central European countries). Besides, there is the problem of growing and changing case-law of the ECtHR on this issue (we should just recall Mr Miroslav Kubicek's report at the last PC-OC Mod meeting).

(Comment by Jason Carter, USA : I also agree with this proposal. On topic 1, perhaps the Secretariat can gather a list of sample assurances that are sought, in both the treaty and non-treaty context. That might streamline the discussion, keeping the plenary session from being a free-for-all that will take up the entire day. It could be limited to a shorter amount of time.)

2) the culture of international co-operation (communications between the central authorities, providing important information related to requests, etc).

As to topic 2, I mean, inter alia, the culture of relations between the central authorities (for instance, in some cases the central authority of the requested state refused to provide information on the situation with our request for extradition after a year or more had elapsed on the pretext that there was no such an obligation in the Convention).

Gaelle Mieli (Switzerland)

With respect to the 60th anniversary of the European Convention on extradition, Switzerland welcomes the decision to hold a special session and stands ready to participate actively in this day. For the topics to be covered, we propose a single theme: diplomatic assurances, which gives rise to questions of substantive and procedural nature.

In particular, the development of such diplomatic assurances, the experience of States with this practice, the content and the monitoring of these guarantees, but also procedural issues both domestically and internationally may be discussed. The European Court of human rights expressed itself repeatedly on this issue; its jurisprudence would also have its importance.

En ce qui concerne le 60^{ème} anniversaire de la Convention européenne d'extradition, la Suisse se réjouit de la décision d'organiser une session spéciale et se tient prête à participer activement à cette journée. Pour les thèmes à couvrir, nous proposons un seul thème, celui des garanties diplomatiques, qui donne à la fois lieu à des questions de nature substantielle et de nature procédurale.

En particulier, le développement de telles garanties diplomatiques, l'expérience des Etats avec cette pratique, le contenu et le monitoring de ces garanties, mais également les questions procédurales tant sur le plan interne qu'international peuvent être discutés. La Cour européenne des droits de l'homme s'étant prononcée à plusieurs reprises à ce sujet, sa jurisprudence aurait également son importance.

Jason Carter (USA)

On substance, I would love to address both (1) length of potential sentence as a basis for denial of extradition and (2) the extradition of nationals.

On procedure, it might be good to address demands for non-treaty-based assurances, as these probably should come through diplomatic channels, but do not always.