

## Russian Federation

### Background

Russia takes an active part in judicial co-operation in the criminal field with many foreign countries, including the Member States of the Council of Europe.

In order to show the scope and experience of Russia's participation in this co-operation, suffice it to say that in 2006 in total more than 10 000 requests for assistance were received from abroad or forwarded to our foreign partners, mainly in the sphere of extradition and legal assistance in criminal matters. And the extent of such co-operation is constantly increasing.

Taking into account ***new character and level of criminal threats and challenges*** to the international community, it is necessary to work out and use efficient means and methods of legal co-operation, which will be adequate to counter these threats.

At the same time, the required new level of anti-criminal co-operation should be based not only on traditional concept of sovereignty, but also on the new principles of European solidarity, mutual trust and responsibility. A pan-European area of freedom, security and justice should be formed in future on the basis of these principles.

It is obvious that the existent European mechanisms of co-operation in criminal matters do not meet, in many aspects, the requirements of present days and, all the more, perspective needs of our countries.

That is why, in accordance with the decisions of the 24<sup>th</sup> Conference of European Ministers of Justice, which took place in Helsinki in April 2005, the Third Summit of the Council of Europe (Warsaw, May 2005) and the 7<sup>th</sup> Conference of the European Prosecutors General, held in Moscow in July 2006, some activities to modernize legal instruments and practice of pan-European co-operation in the criminal field are being carried out in the framework of the Council of Europe.

Some amendments to several European conventions in the criminal field had been made before which is shown, in particular, by the conclusion of two supplementary protocols both to the Convention on Extradition and the Convention on Mutual Assistance in Criminal Matters in 1975, 1978 and 2001, as well as the 2003 Protocol amending the European Convention on the Suppression of Terrorism.

But today, taking into account new nature of criminal threats as well as the experience of legal cooperation gained either in bilateral relations or within the sub-regional European organizations (especially in the European Union, the Nordic Council, and the Commonwealth of Independent States), we should, in our opinion, take up a fundamentally new level of legal and organizational ensuring of the pan-European judicial cooperation.

As to the European conventions on extradition and legal assistance, we should take steps to elaborate the treaties of the "second generation" as it was done, for instance, with respect to the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime which will be soon replaced by the new Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).

As is well known the Committee of Experts on Operation of the European Conventions on Co-operation in Criminal Matters (PC-OC) is engaged in the work to determine the problem issues related to the interpretation and implementation of, first of all, the European Convention on Extradition and the European Convention on Mutual Legal Assistance in Criminal Matters which are of most interest from the point of modernization of these two instruments and of practice of their application.

*1. Please give examples of criminal cases, without personal data, where public prosecutors in your country have experienced significant difficulties when working with public prosecutors or other judicial bodies in other European countries. In your opinion, what are the reasons of these difficulties (e.g. types of cases which raise special difficulties linked to domestic laws or foreign legislation or procedures, lack of knowledge of the steps to be taken, lack of direct contacts, insufficient knowledge of languages or legal instruments, or problems linked to translation, undue delay, gaps or inappropriate provisions of the relevant European Conventions and bilateral agreements or other texts, etc...).*

As we know, many States have different problems connected with the execution of the European conventions in the criminal field. In particular, they are caused by the differences in national legislations, misinterpretation and improper implementation of conventional norms, by disadvantages and gaps in legal regulation on both national and international levels, lack of skilled personnel and, in some instances, by groundless politicization of co-operation issues.

Russia often faces some problems in legal co-operation in criminal matters, including inadmissibly long term of execution of Russian requests for legal assistance in several countries and groundless, in our opinion, refusals of extradition for political reasons of the persons accused of committing economic crimes (fraud, misappropriation, money laundering etc.).

It is worth to be mentioned that at present in a number of the Council of Europe Member States dozens of Russian requests for legal assistance in criminal matters have been under execution for more than 2 years, and one of such 'long-live' requests is still being executed for almost four and a half years. At the same time when our prosecutors ask to provide any information concerning the processing of these requests, we often receive no replies. But in such circumstances there is a great danger of lapse of time and to the fundamental right of any individual to fair trial in a reasonable time, fixed by Article 6 of the European Convention on Human Rights.

Now we do not want to name the countries that are 'problem' ones for Russia. The Russian Prosecutor General's Office is making additional efforts to solve the above-mentioned problems and still has some hopes for positive results. In case of failure we will have to apply to some international instances to get justice settlement of those problems.

According to the confidential police information, the Russian criminal community considers some European countries as possible safe havens because of their very liberal regimes of extradition and granting of asylum. But it is necessary to remember that offenders bring to the countries of their new residence not only 'dirty' money but their criminal expertise and illegal methods of doing business, including corruption and violent offences. And this conclusion has been confirmed in many instances.

*2. Please give examples of criminal cases, without personal data, where public prosecutors in your country were satisfied with the co-operation with public prosecutors or other judicial bodies in other European countries. In your opinion, what are the reasons for this successful co-operation (e.g. types of cases which can be dealt with without difficulty, national or foreign good practices, practical measures contained in the provisions of the relevant European Conventions and bilateral agreements or other texts, etc...).*

The Russian Federation has good results of judicial co-operation in criminal matters with many of our European partners (for example, with Azerbaijan, Armenia, Germany, Norway, Switzerland, Estonia).

In the sphere of extradition our colleagues from the Czech Republic and Lithuania may be praised as good and reliable partners.

It proved very fruitful to establish close working contacts with those officers in foreign agencies who are responsible for certain forms of mutual legal assistance. In many cases the Russian Prosecutor General's Office signed bilateral and multilateral **agreements (memoranda of understanding) on co-operation** with its foreign counterparts. Now the Prosecutor General's Office of the Russian Federation has 25 such agreements (memoranda of understanding) on co-operation, including 4 multilateral ones (in the framework of the CIS). For instance, these formal arrangements of co-operation embrace our partners from **13 European countries** (Armenia, Azerbaijan, Belarus, Bulgaria, Cyprus, the Czech Republic, Georgia, Moldova, Montenegro, Slovakia, Switzerland, Ukraine and the United Kingdom).

*3. Please give details of any suggestions made by public prosecutors and other judicial bodies in your country concerning the steps which could be taken to improve co-operation between prosecutors in Council of Europe member states, including proposals for an improvement of the relevant European treaties.*

There were many concrete proposals made by the representatives of the Prosecutor General's Office of the Russian Federation and other Russian agencies concerned in relation of various steps which could be taken to improve co-operation between prosecutors and other judicial bodies in Council of Europe member states, including suggestions for an improvement of the relevant European conventions. One might note, for example, the contribution made by Yu. Chayka, Prosecutor General of the Russian Federation at the High-Level Conference of the Ministries of Justice and of the Interior "Improving of European Co-operation in Criminal Justice Field" (Moscow, 9-10 November 2006).

***The most substantial of these proposals are as following:***

1. As for **the European Convention on Extradition** which, by the way, this December will have its 50<sup>th</sup> anniversary, some measures to ensure, in particular, the **acceleration and facilitation of extradition procedures** should be provided for. There are often cases when requests for extradition are under consideration for years and the wanted is frequently under arrest all that time.

Within the European Union due to the application of the European Arrest Warrant the time for extradition procedure has been reduced to 35-40 days. If there is no way to partially extend this practice to all European countries then one of the important steps to facilitate extradition may be the institution of **simplified extradition procedure** in case when the person agrees to his/her surrender.

2. It is also necessary to discuss the issue of limiting the application of the **rule of speciality** that is foreseen in Article 14 of the Convention in regarding to some restrictions of criminal prosecution of the person extradited. At least, such person should have an opportunity to refuse the immunities granted to him by that Article.

3. It seems that the **lapse of time** as a mandatory ground for refusal of extradition (Art 10, the European Convention on Extradition) may be turned into an optional ground.

For instance, the *European Arrest Warrant* (EAW) foresees in Art 4.4<sup>4</sup>, as an optional ground for refusal to surrender, the situation where the prosecution or the punishment is statute barred according to the law of the requested State and where that State has jurisdiction over the acts according to its law.

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4 Art 4.4 EAW: "The executing judicial authority may refuse to execute the European arrest warrant: 4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law "

4. Plenty of issues have not been regulated or have not been fully expounded in the **1959 European Convention on Mutual Legal Assistance in Criminal Matters**.

In particular, in our opinion, the procedures connected with **transfer of separate types of evidence**, namely drugs, firearms and a person's DNA sample, need a separate and detailed regulation since such transfer concerns with customs requirements and human rights, respectively.

5. The important issue for the pan-European treaty regulation is **protection of witnesses** and their relatives, including those living abroad. One should also think about the European cooperation in providing **key witnesses with shelter abroad** that is of particular importance for small countries in Europe.

6. In our point of view, provisions on **delivery of information on criminal records of nationals** of the Parties to the Convention is to be expounded; in the conditions of high mobility of the population of the "Grand Europe" it seems to be important for both prevention of crimes and possible registration with a view to establishing the fact of repeated crime committed by a certain person as a circumstance aggravating his/her responsibility. One may note this kind of experience in the international treaty practice (including within the Commonwealth of Independent States); certain work is being carried out within the European Union in that direction.

7. It seems rather promising to regulate issues connected with rendering assistance to other State Parties in **conducting technically complicated expert research** (for instance, DNA analysis and blast-technical examination). In particular, there is a problem of admissibility of evidence obtained in such a way.

8. In regard to **updating of the both European conventions** (either on Extradition or Legal Assistance in Criminal Matters) it is necessary to consider the issue of restricting traditional grounds to refuse assistance.

For instance, quite often persons charged with commission of various crimes (including crimes connected with drug trafficking, organized crime, money laundering, fraud), in order to avoid liability, declare that **political motives** serve as grounds of their actions or that they are criminally prosecuted due to their political, religious or other views.

Meanwhile, at present there is no internationally recognized definitions of such notions as a "political offence", an "offence connected with a political offence" and an "offence inspired by political motives", widely used in some European conventions. Moreover, almost all states in Europe (and in the world as a whole), including the Russian Federation, do not have definitions of these notions in their national legislations.

Of course, it's impossible and of no need to give a positive legal definition of a "political offence", an "offence connected with a political offence" and an "offence inspired by political motives". But we suppose that it'll be very useful and practically achievable to limit the possibility of abusing the "political offence" clause, by excluding from offences that might be considered as political offences, etc. the offences envisaged in the international treaties concluded at universal and regional level.

Similar approach of the so-called "negative" definition of a "political offence" was used in many bilateral treaties concluded in the XIXth century between some States in Europe, including Russia (in relation to the murder and attempt to murder of heads of State and members of their families). Nowadays there are plenty of provisions based on the said approach (but provisions of not a general nature) in the multilateral treaty practice, both regional and universal (e.g. the European Convention on Extradition, Article 3 (3); the 1975 Additional Protocol to the European Convention on Extradition, Article 1; the 2003 Protocol amending the European Convention on the Suppression of Terrorism, Article 1; the 1997 International Convention for the Suppression of

Terrorist Bombings, Article 11; the 2005 Council of Europe Convention on the Prevention of Terrorism, Article 20 (1).

It's high time to restrict the possibility of arbitrary interpretation of the above-mentioned conventional notions. In this regard the approach fixed in the 2003 Protocol amending the European Convention on the Suppression of Terrorism could be used. The idea is to include into the European Convention on Extradition and the European Convention on Mutual Legal Assistance in Criminal Matters a provision saying that the Contracting States shall not consider offences envisaged in the international treaties to which both the requesting and the requested States are Parties, as political offences or offences connected with political offences.

9. The two Conventions should also provide for **effective mechanisms to settle disputes** concerning interpretation and application of these instruments (for instance, the European Convention on Extradition does not contain such provisions at all). Unsettled disputes may lead to deterioration of relations between the Participating States in general and affect bilateral legal co-operation due to possible use of the reciprocity principle as a measure of "retaliation".

But we think that the corresponding provisions of the European Convention on the Suppression of Terrorism amended by the Protocol of 2003 may be taken as an example for such a regulation.

We also believe that in relation to the **reservations** to the European Conventions on Extradition and Mutual Legal Assistance in Criminal Matters one may use the Council of Europe's modern treaty practice. It is proposed to introduce some limitation of a number of reservations which a Participating State may make and the institution of the mechanisms of their periodic (in 3 or 5 years) review in order to confirm or withdraw such reservations.

10. The experience of not only European countries may be used in order to improve the efficiency of pan-European cooperation in criminal matters. In particular, the Group of Eight, the United Nations, the Organization of American States and the Commonwealth of Independent States have some documents of interest in this field.

For instance, the 1981 Inter-American Convention on Extradition (in contrast to the European Convention on Extradition) establishes some priorities in extradition when **concurrent requests** from different states are submitted. Article 15 of the said Convention reads as following:

"When the extradition is requested by more than one State for the same offense, the requested State shall give preference to the request of the State in which the offense was committed. If the requests are for different offenses, preference shall be given to the State seeking the individual for the offense punishable by the most severe penalty, in accordance with the laws of the requested State. If the requests involve different offenses that the requested State considers to be of equal gravity, preference shall be determined by the order in which the requests are received."

Perhaps, it will be wise to add a similar provision to the European Convention on Extradition in order to facilitate the requested State the task of making a hard choice between the interests of two or more requesting States and to avoid "creating offended Parties".

Perhaps, a revised European Convention on Extradition should also establish the priority of the request for extradition (or transfer) received from **an international criminal court (tribunal)** when both the requesting and the requested states recognize the competence of that.

11. We also strongly support the PC-OC proposals to set up a **network of national persons of contact** experienced in the issues of international co-operation in the criminal field and an **electronic database** on national procedures as well as development of **CoE publications, web site and a special newsletter**.

#### 4. Any other comments.

There are a lot of problems in the field under consideration and they should be resolved rather urgently.

The current task of the Consultative Council of European Prosecutors (CCPE) is to give a highly professional impulse to the on-going work on bringing pan-European mechanisms of legal co-operation in line with the today's demands and, if possible, with the needs of near future at least.

There is a strong feeling that the outcome of the CCPE's study on ways and means to improve international co-operation between public prosecutors or other judicial bodies in Europe will persuade the European Committee on Crime Problems (CDPC) in its plenary meeting in June 2007 to give a mandate to the PC-OC to carry out practical work on strengthening the European treaty regime in the sphere of extradition and legal assistance in criminal matters including, as a matter of high priority and at first stage, prompt elaboration of a draft legally-binding instrument modernizing the European Convention on Extradition. We think that it may be a revised version of this Convention (depending on the number of amendments agreed) – the Convention of the "second generation".