

Strasbourg, 29 June 2001
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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

50th Plenary Session
(25th meeting as a Steering Committee)

Strasbourg, 18-22 June 2001

List of items discussed and decisions taken

1. The European Committee on Crime Problems (CDPC) held its 50th plenary session (25th meeting as a Steering Committee) in Strasbourg from 18 to 22 June 2001 with Mr M. Grotz (Germany) in the chair. To mark the anniversary, Mr H. C. Krüger, Deputy Secretary General, addressed the Committee. The list of participants and the agenda appear at appendices I and II respectively.
2. The CDPC elected:
 - Mr D. FONTANAUD (France) as Chairman, and Messrs E. SELVAGGI (Italy) and Ž. HORVATIĆ (Croatia) as members of the Bureau;
 - Mr M. MELLETT (Ireland), Ms S. SNACKEN (Belgium) and Mr G. MARJANOVIĆ (“The former Yugoslav Republic of Macedonia”) as members of the Council for Penological Co-operation;
 - Ms M. DEL TUFO (Italy) and Mr P. TOURNIER (France) as members of the Criminological Scientific Council.

Items requiring action by the Committee of Ministers

3. The CDPC approved the draft Convention on Cyber-Crime (with 32 votes for, 3 against and 5 abstentions). The only obstacle to a unanimous decision was the insertion of Article 41 containing the federal clause. The CDPC also approved the accompanying explanatory report. The Committee of Ministers is invited to adopt the text of the draft Convention, bearing in mind the CDPC's introductory note to the draft text, and to authorise publication of the explanatory report (Addendum I to the present report)¹.

4. The CDPC approved the draft Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (unanimously) and the accompanying explanatory report. The Committee of Ministers is invited to adopt the text of the draft Additional Protocol and to authorise publication of the explanatory report (Addendum II to the present report).

5. The CDPC approved the draft Recommendation concerning guiding principles on the fight against organised crime and the accompanying explanatory memorandum. The Committee of Ministers is invited to adopt the draft Recommendation and to authorise publication of the explanatory memorandum (Addendum III to the present report).

6. The CDPC approved the draft Recommendation on the European Code of Police Ethics and the accompanying explanatory memorandum. The Committee of Ministers is invited to adopt the draft Recommendation and to authorise publication of the explanatory memorandum (Addendum IV to the present report).

7. The CDPC approved the draft Recommendation concerning the protection of children against sexual exploitation and the accompanying explanatory memorandum. The Committee of Ministers is invited to adopt the draft Recommendation and to authorise publication of the explanatory memorandum (Addendum V to the present report).

8. The CDPC adopted specific terms of reference for a Committee of Experts on pre-trial detention and its implications for the management of penal institutions (PC-DP). The Committee of Ministers is invited to approve these terms of reference (Appendix III to the present report).

9. The CDPC complemented the specific terms of reference for the Group of Specialists on Internal Security Services (PC-S-SEC) – adopted by the Committee of Ministers at the 733rd meeting of their Deputies – by selecting the member States entitled to appoint experts whose expenses will be borne by the Council of Europe (paragraph 6c of the terms of reference). The Committee of Ministers is invited to take note of the terms of reference so amended (Appendix IV to the present report).

¹ Already submitted to the Committee of Ministers at the 761st meeting of their Deputies (18 July 2001).

10. The CDPC adopted specific terms of reference for a Committee of Experts on the criminalisation of acts of a racist or xenophobic nature committed through computer networks (PC-RX) which would prepare a draft Additional Protocol to the Convention on Cyber-Crime once the text of that convention has been adopted. The Committee of Ministers is invited to approve these terms of reference (Appendix V to the present report).

11. The CDPC approved the report prepared by its working group on follow-up action to the Committee of Ministers' monitoring of member States' judicial systems (PC-WG-Monitor/JS), in pursuance of the decision taken by the Ministers' Deputies at their 693rd meeting. It decided to take the report into account in its future work on the efficiency of justice (see paragraph 14 below). The Committee of Ministers is invited to take note of the report (Addendum VI to the present report).

12. The CDPC approved the report prepared by the Committee of Experts on police ethics and problems of policing (PC-PO) on follow-up action to the Committee of Ministers' monitoring of police and security forces (document CM/Monitor (2000) 11) and decided to take it into account in its future work on police matters (see paragraph 14 below). The Committee of Ministers is invited to take note of the report (Addendum VII to the present report).

Other items

13. The CDPC was informed by the Director for Legal Co-operation of developments in European legal co-operation and the role and working methods of the Council of Europe in this field, including the activities for strengthening the Rule of Law (ex-ADACS).

14. Having noted the activities which have been, or are expected to be, finished in 2001, and having been informed of the likely budgetary situation in the years to come, the CDPC agreed, subject to the availability of the necessary resources in 2002/2003, to include the following activities in its future work programme (in order of priority):

- acts of a racist or xenophobic nature committed through computer networks (to be examined by a Committee of Experts (PC-RX) – see paragraph 10 above and Appendix V):
- police matters, including follow-up action to the monitoring of police forces (to be examined by a Council for Police Matters, to be set up as an advisory body to the CDPC – terms of reference to be adopted by the Bureau);
- efficiency of justice, including follow-up action to the monitoring of the functioning of member States' judicial systems and a study of international co-operation in the transmission of applications for legal aid in criminal proceedings (in pursuance of the instruction given by the Ministers' Deputies at their 754th meeting – item 10.2b) (to be examined by a Committee of Experts – terms of reference to be prepared by the Bureau);
- evaluation of anti-money laundering measures (carried out by Committee PC-R-EV, in future to be financed by the Council of Europe budget);

- pre-trial detention and its implications for the management of penal institutions (to be examined by a Committee of Experts (PC-DP) – see paragraph 8 above and Appendix III);
- internal security services (to be examined by a Group of Specialists (PC-S-SEC) – see paragraph 9 above and Appendix IV).

Moreover, the CDPC decided to assign ad hoc terms of reference to the Council for Penological Co-operation (PC-CP) for the purpose of revising the European Prison Rules, contained in Recommendation N° R (87) 3 (terms of reference to be adopted by the Bureau).

The CDPC decided to postpone, for the time being, work on the treatment of sex offenders in penal institutions and in the community for which it had agreed at its 48th plenary session (June 1999) to set up a Committee of Expert (PC-DS); however, due to budgetary constraints this committee has not yet been convened.

15. The CDPC took note of the proposals made by Committee PC-SE for future work in the field of combating sexual exploitation of children and invited the Bureau to examine them, with a view to submitting recommendations to the CDPC at its next plenary session.

16. The CDPC took note of the conclusions adopted at the second Pan-European Conference of Prosecutors General of Europe (Bucharest, 12-16 May 2001). It also took note of the preparations for the second consultation meeting on the Statute of the International Criminal Court (Strasbourg, 13-14 September 2001), the 24th Conference of European Ministers of Justice (Moscow, 4-5 October 2001), the 13th Conference of Directors of Prison Administration (Strasbourg, 2002) and the 22nd Criminological Research Conference on the theme 'Fear of crime, mass media, and public attitudes to crime and criminal justice' (Strasbourg, 2003).

17. The CDPC took note of the work of the Multidisciplinary Group on Corruption (GMC), in particular the draft Additional Protocol to the Criminal Law Convention and the draft Recommendation on common rules for the prevention of corruption in the funding of political parties and electoral campaigns, as well as the activities carried out within the Stability Pact for South-Eastern Europe, in particular the anti-corruption initiative (SPAI) and the anti-organised crime initiative (SPOC).

APPENDIX / ANNEXE I

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS^(*)

ALBANIA / ALBANIE

Mr Shefki BEJKO, University of Tirana

- * Mr Sokol TONA, Ministry of Justice

ANDORRA / ANDORRE

- * M. André PIGOT, Magistrat honoraire, Ancien membre du Conseil Supérieur de la Justice
- M. Jean-Louis VUILLEMIN, Tribunal Supérieur de la Justice

ARMENIA / ARMÉNIE

Ms Liana AVETISYAN, Ministry of Foreign Affairs

- * Mr Hovhannes POGHOSYAN, Ministry of the Interior

AUSTRIA / AUTRICHE

Mr Karl DREXLER, Ministry of Justice

Mr Roland HEUREX, Ministry of Justice

- * Ms Gertraude KABELKA, Ministry of Justice

AZERBAIJAN / AZERBAÏDJAN

Mr Ramiz TAGIEV, Head of Division

- * Mr Sahib TAGHI-ZADE, Ministry of the Interior

BELGIUM / BELGIQUE

- * M. Claude DEBRULLE, Ministère de la Justice
- M. Rudi TROOSTERS, Ministère de la Justice

BULGARIA / BULGARIE

Mme Julia MITEVA, Ministère de la Justice

- * Mr Petar RASHKOV, Ministry of Justice

CROATIA / CROATIE

- * Mr Željko HORVATIĆ, University of Zagreb
- Mr Tihomir KRALJ, Ministry of Interior

(*) States are listed in alphabetical order by their English names. The names of participants are also in alphabetical order, the names of the Heads of Delegation being preceded by an asterisk.

Les Etats sont mentionnés par ordre alphabétique anglais. Les noms des participants sont également indiqués par ordre alphabétique, les noms des Chefs de délégation étant précédés d'un astérisque.

CYPRUS / CHYPRE

Mrs Elena KLEOPAS, Law Office of the Republic

- * Mr Lazaros S. SAVVIDES, Ministry of Justice and Public Order

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

Ms Jaroslava NOVOTNÁ, Supreme Prosecutor's Office

- * Ms Irena STÁTNIKOVÁ, Ministry of Justice

DENMARK / DANEMARK

Mr Mads Christian CHRISTENSEN, Ministry of Justice

Mr Henning FODE, Director of Public Prosecutions

- * Mr Jesper HJORTENBERG, Assistant Deputy Director of Public Prosecutions
- Mr Jens Kruse MIKKELSEN, Ministry of Justice
- Mrs Marianne SECHER, Department of Prisons and Probation, Ministry of Justice

ESTONIA / ESTONIE

Mr Pavel GONTSHAROV, Office of the Prosecutor-General

Mrs Imbi MARKUS, Ministry of Justice

FINLAND / FINLANDE

Ms Anna-Katrina GRÖNHOLM, Helsinki Central Prison

Mr Antti PIHLAJAMÄKI, Prosecutor's Office of Turku Administrative District

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- * M. Daniel FONTANAUD, Ministère de la Justice
- Mme Claudine JACOB, Ministère des Affaires Etrangères

GEORGIA / GÉORGIE

- * Mr Mamuka JGENTI, Ministry of Foreign Affairs
- Mr Kakha KAKHISHVILI, General Prosecutor's Office

GERMANY / ALLEMAGNE

Mr Richard BLATH, Bundesministerium der Justiz

Mr Harald EGERER, Bundesministerium der Justiz

- * Mr Michael GROTZ, Bundesministerium der Justiz -

Chairman of the CDPC / Président du CDPC

Mr Ekkehart KAPPLER, Bundeskriminalamt

Mr Manfred MÖHRENSCHLAGER, Federal Ministry of Justice

GREECE / GRÈCE

- * Ms Marie ARVANITI, Ministry of Justice
- Ms Anna ZAIRI, Court of Appeal

HUNGARY / HONGRIE

- * Mr Lipót HÖLTZL, Ministry of Justice
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IRELAND / IRLANDE

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- * Mr Michael MELLETT, Department of Justice, Equality and Law Reform
- Mr John O'DWYER, Department of Justice, Equality and Law Reform

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- * M. Vitaliano ESPOSITO, Représentation Permanente de l'Italie auprès du Conseil de l'Europe
 - Mr Eugenio SELVAGGI, Procura Generale della Repubblica presso la Corte di Appello di Roma
- Vice-Chairman of Committee PC-OC / Vice-Président du Comité PC-OC**

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- * Mr Viesturs BURKĀNS, Office of the Prosecutor General
- Ms Violeta ZEPPA, Ministry of Justice

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- * Mr Lothar HAGEN, President of the Criminal Court
- Mme Elisabeth LAMBERT, Représentation Permanente de Liechtenstein auprès du Conseil de l'Europe

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- * Mr Silvio CAMILLERI, Ministry for Justice and the Arts
- Ms Donatella FRENDO DIMECH, Attorney General's Chambers

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- Mr Alexander PATIJN, Ministry of Justice
- Mr Bart VAN DER LINDEN, Ministry of Justice

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Mr Cipot STOJANOVIC, Representation of Bosnia-Herzegovina to the Council of Europe

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Apologised / Excusé

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Apologised / Excusé

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PENAL REFORM INTERNATIONAL (PRI)

PERMANENT EUROPEAN CONFERENCE ON PROBATION AND AFTERCARE
CONFÉRENCE PERMANENTE EUROPÉENNE DE LA PROBATION (CEP)

Mr John WALTERS, Secretary General

WORLD SOCIETY OF VICTIMOLOGY /
SOCIÉTÉ MONDIALE DE VICTIMOLOGIE

Mlle Aglaia TSITSOURA, Université "Panteios", Athènes

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Mr Tim CARTWRIGHT Head of Planning and Evaluation Department /
Chef du Service de Planification et d'Evaluation

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Interpreters / Interprètes

Mlle Sarah ADLINGTON
Mme Amanda BEDDOWS
Mme Marie-José HALT
Mme Cynera JAFFREY
Mr Jean-Louis WÜNSCH

APPENDIX II

AGENDA

OPENING OF THE MEETING

- 1 Address by the Deputy Secretary General
Statement by the Director for Legal Co-operation
- 2* Adoption of the agenda
- 3 Information provided by the Secretariat

STRUCTURES OF THE CDPC

- 4* Election of:
 - the Chairperson and two members of the Bureau
 - three members of the Council for Penological Co-operation
 - two members of the Criminological Scientific Council

ACTIVITIES OF THE CDPC

Committees

- 5* Crime in cyber-space (PC-CY):
Draft Convention on Cybercrime and Explanatory Report
- 6* Operation of European Conventions in the penal field (PC-OC):
 - Draft Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and Explanatory Report
 - Other items for information
- 7* Police ethics and problems of policing (PC-PO):
 - Draft European Code of Police Ethics and Explanatory Memorandum
 - Follow-up to the monitoring of police forces: proposals

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NB: Agenda items with an asterisk (*) require a decision.

- 8*** Criminological and criminal law aspects of organised crime (PC-CO/PC-S-CO):
- Draft Recommendation concerning guiding principles on the fight against organised crime and Explanatory Memorandum
 - Reports on the organised crime situation
 - Best practice surveys
- 9*** Council for Penological Co-operation (PC-CP):
- Conditional release (parole): progress report (for information)
 - Revision of the European Prison Rules: terms of reference
 - SPACE: progress report (for information)
 - Other items for information
- 10*** Remand in custody and its implications for the management of penal institutions (PC-DP):
- Terms of reference
- 11*** Internal security services (PC-S-SEC):
- Composition of Group of Specialists
- 12** New ways of dealing with juvenile delinquency (PC-JU):
- Progress report (for information)
- 13*** Protection of children against sexual exploitation (PC-SE):
- Draft Recommendation on the Protection of Children Against Sexual Exploitation and Explanatory Memorandum
- 14** Evaluation of anti-money laundering measures (PC-R-EV):
- Progress report (for information)
- 15** Partnership in crime prevention (PC-PA):
- Progress report (for information)
- 16** Management of long-term prisoners (PC-LT):
- Progress report (for information)
- 17*** Follow-up action to the monitoring of judicial systems (PC-WG-Monitor/JS):
- Report
- 18** Advisability of drawing up an Additional Protocol to the Money Laundering Convention (PC-S-ML):
- Progress report (for information)
- 19** Developments in international co-operation in criminal matters – “New Start” (PC-S-NS):
- Progress report (for information)

Deleted: Progress report (for information)

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Conferences and Colloquia

- 20 Second consultation meeting on the Statute of the International Criminal Court (Strasbourg, 2001): preparation
- 21 24th Conference of European Ministers of Justice (Moscow, 2001): preparation
- 22 13th Conference of Directors of Prison Administration (Strasbourg, 2002): preparation
- 23 22nd Criminological Research Conference (Strasbourg, 2003): preparation
- 24 Pan-European Conference of Public Prosecutors (Bucharest, 2001): conclusions

Future work programme

- 25 Implementation of activities already included in the work programme
- 26* New activities for 2002/2003, including
 - police matters
 - judicial control of deprivation of liberty
 - protection of children against sexual exploitation

Deleted: 27* . Police Matters:
setting up an advisory body

27 ITEMS FOR INFORMATION

- Co-operation programmes for strengthening the Rule of Law
- “Octopus” Project
- European Conferences of Specialised Services against corruption
- Publications
- New developments in legislation, policy and administrative practice in member States in the field of crime problems
- Forum for Children and Families
- Pompidou Group
- Co-operation with the European Union
- Co-operation with United Nations
- Activities of international organisations (other than United Nations) in the field of crime problems
- Relations between the Council of Europe and OECD
- Co-operation with Financial Action Task Force (FATF) (cf. item 14)
- International Criminal Tribunal for the former Yugoslavia / Establishment of an International Criminal Court (cf. item 20)
- Stability Pact for South Eastern Europe: corruption and organised crime initiatives

OTHER SUBJECTS

- 28** Activities of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly
- 29** Activities of the Multidisciplinary Group on Corruption (GMC)
- Draft Additional Protocol to the Criminal Law Convention on Corruption
 - Draft Recommendation on common rules against corruption in the funding of political parties and electoral campaigns
- 30*** Working Party on the implications of data protection for police and judicial co-operation in criminal matters (CJ-PD/GT-PJ): appointment of a CDPC representative
- 31** Other business
- 32*** Date of the next plenary session.

Deleted: 30 . Abolition of the death penalty: exchange of information

APPENDIX III

**SPECIFIC TERMS OF REFERENCE OF THE COMMITTEE OF EXPERTS
ON REMAND IN CUSTODY AND ITS IMPLICATIONS
FOR THE MANAGEMENT OF PENAL INSTITUTIONS
(PC-DP)**

DECISION CDPC/117/220601

1. Name of the Committee: Committee of Experts on remand in custody and its implications for the management of penal institutions (PC-DP)
2. Type of Committee: Committee of Experts
3. Source of terms of reference: European Committee on Crime Problems (CDPC)
4. Terms of reference

For the purpose of the Committee's work, persons remanded in custody should be taken to include all persons deprived provisionally of their liberty by decision of a prosecutor or court.

While it is generally acknowledged that remand in custody should be "an exceptional measure" reduced to the "minimum compatible with the interests of justice" (Recommendation No. R (80) 11), the Council of Europe's annual penal statistics (SPACE I) reveal that pre-trial detainees continue to make up an important part of the total prison population.

Remand in custody, in particular when used at a large scale and over longer periods, raises concerns as to the presumption of innocence and the efficiency of the justice system. The great number of remand prisoners and the length of their detention also puts a heavy burden on the management of places of detention.

Although remand prisoners are presumed innocent, it is widely recognised that the conditions of detention for this category are often worse than those experienced by convicted prisoners. This applies both to material conditions of detention as to regime facilities. In addition, remand prisoners are frequently subject to restrictions in their right to communicate with other prisoners as well as with family and friends and in some countries also with their lawyers.

The conditions of pre-trial detention and the need for safeguards against abusive restriction of rights and ill-treatment of remand prisoners are also a permanent item on the agenda of the Steering Groups for the reform of the prison systems of several member States, in particular with regard to custody in police cells or in remand prisons managed by the police.

The Committee of Experts should consider in particular the following aspects:

- a. the need to update Recommendation No. R (80) 11 concerning custody pending trial, in the light of new developments in the use of pre-trial detention, taking into account Recommendation 1245 (1994) on the detention of persons pending trial adopted by the Parliamentary Assembly and the reply given by the Committee of Ministers on 11 September 1995. In particular, the Committee should examine the contemporary legal and judicial justification for the use of remand in custody, the desirability of developing risk assessment instruments and the use of alternatives to remand in custody;
- b. ways to improve the conditions of detention of remand prisoners, in particular:
 - the material conditions of detention (separate from or together with convicted prisoners, single/multiple cells, sanitary facilities, libraries, sport activities, health care, etc.);
 - regime aspects such as time spent out of cell, work, education, participation in - and preparation for - treatment programmes as well as contacts with other prisoners and the outside world;
 - the management of special categories of remand prisoners such as juveniles, women, elderly, foreigners, mentally disturbed and violent prisoners;
 - the selection and training of staff working with remand prisoners.
- c. ways to prevent undue restriction of rights and ill-treatment of remand prisoners, with special emphasis on:
 - information on their legal rights; provision of facilities to prepare their defence; access to their own doctor or dentist;
 - decision-making in respect of remand prisoners (competence of prison directors, judges, prosecutors);
 - inspection and monitoring of the conditions of remand in custody;
 - individual complaints procedures;
 - conditions of remand in custody in police cells, or in remand prisons where these are not under the authority of the prison administration.

The study conducted by the Committee should lead to a Report and a Recommendation setting out, in particular, guidelines for good practice, bearing in mind existing instruments and in particular the European Convention on Human Rights and its case-law, the European Prison Rules, Recommendation N° R (80) 11 concerning custody pending trial as well as the reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT).

5. Membership of the Committee:

- a. One expert appointed by the Government of each of the following member States:

Austria, Croatia, Estonia, Finland, France, Germany, Greece, Italy, Netherlands, Poland, Portugal, Romania, Slovakia, Turkey, United Kingdom²

² Participates at Government's expense.

- b. The Council of Europe budget will bear the travel and subsistence expenses for one expert from each of the aforementioned States (except United Kingdom).
 - c. Qualifications required of Committee members: practitioners with experience in the management of remand prisoners.
 - d. The Bureau of the CDPC may authorise the admission of observers to the Committee.
6. Working structures and methods: -
7. Duration:

These terms of reference will expire on 31 December 2003.

APPENDIX IV

SPECIFIC TERMS OF REFERENCE OF THE GROUP OF SPECIALISTS
ON INTERNAL SECURITY SERVICES
(PC-S-SEC)

DECISION CDPC/118/220601

1. Name of the Committee: Group of Specialists on Internal Security Services (PC-S-SEC)
2. Type of Committee: Committee of Experts
3. Source of terms of reference: Committee of Ministers (733rd meeting, 7 December 2000)

4. Terms of reference:

The committee will undertake a study on the role and responsibilities of internal security services with a view to preparing a report detailing, inter alia, the feasibility of recommendations in this regard.

In the execution of its terms of reference the committee shall bear in mind Parliamentary Assembly Recommendation 1402 (1999) and take account of:

- the relevant case-law of the European Court of Human Rights;
- the relevant Council of Europe instruments;
- the current work of the Committee of Experts on Police Ethics and Problems of Policing (PC-PO).

5. Membership of the committee:

- a. All member states are entitled to appoint one or more experts (preferably no more than two).
- b. Two scientific experts shall be appointed by the Secretariat.
- c. The Council of Europe budget will bear the travel and subsistence expenses of one expert in respect of: Cyprus, Denmark, Estonia, Ireland, Italy, Latvia, Lithuania, Malta, Portugal, Sweden, Switzerland, Romania, Russia, Ukraine and United Kingdom, and of the two scientific experts.
- d. Qualifications required of Committee members: experts on the legal aspects of the organisation, role, duties and mode of functioning of internal security services; public prosecutors and judges versed in the relevant case-law.

- e. The European Commission and the Secretariat General of the Council of the European Union may send representatives to the committee's meetings, without voting rights or defrayal of expenses.
- f. The CDPC Bureau may authorise observers to attend the committee's meetings.

6. Working structures and methods

On completion of its work, the committee will transmit its results to the Committee of Ministers through the CDPC.

7. Committee(s) informed of the terms of reference for action:

European Committee on Crime Problems (CDPC).

8. Committee(s) informed of the terms of reference for information:

- European Committee on Legal Co-operation (CDCJ)
- Steering Committee for Human Rights (CDDH)
- Project Group on Data Protection (CJ-PD)
- Committee of Experts on Police Ethics and Problems of Policing (PC-PO).

9. Duration:

These terms of reference will expire on 31 December 2002.

APPENDIX V

**SPECIFIC TERMS OF REFERENCE OF THE COMMITTEE OF EXPERTS
ON THE CRIMINALISATION OF ACTS OF A RACIST OR XENOPHOBIC
NATURE COMMITTED THROUGH COMPUTER NETWORKS
(PC-RX)**

1. Name of the Committee: COMMITTEE OF EXPERTS ON THE CRIMINALISATION OF ACTS OF A RACIST OR XENOPHOBIC NATURE COMMITTED THROUGH COMPUTER NETWORKS (PC-RX)
2. Type of the Committee: Committee of Experts
3. Source of terms of reference: European Committee on Crime Problems (CDPC)
4. Terms of reference:
 - a. The CDPC approved in June 2001 the draft Convention on Cyber-Crime and transmitted it to the Committee of Ministers with a view to its adoption and opening for signature. This instrument is aimed at the co-ordinated criminalisation of certain offences committed against or through computer networks and provides for the adoption of criminal procedure and international co-operation measures to combat this form of criminality. However, the Convention does not deal with the issue of the criminalisation of behaviour which consist in the dissemination of messages or material of a racist or xenophobic nature through computer networks. This issue was left out from the “mother” Convention because some delegations expressed strong concern about including such a provision, *inter alia* on freedom of expression grounds. It was therefore decided to draw up an additional Protocol to the Convention on this issue.
 - b. Many States have already criminalised certain acts related to racist or xenophobic content. However, the dissemination of such material through computer networks poses even greater challenges for law enforcement. It is thus necessary to adopt a co-ordinated approach which enables an effective domestic and international response, based on common elements to be included in an additional Protocol to the Convention on Cyber-Crime. Such a Protocol would entail an extension of the Convention’s scope, including its substantive, procedural and international cooperation provisions, so as to cover also offences of racist or xenophobic propaganda. Thus, apart from harmonising the substantive law elements of such behaviour, the Protocol would improve the ability of the Parties to make use of the means and avenues of international cooperation set out in the “mother” Convention in this area.
 - c. The Committee's terms of reference are as follows:

Taking into account the Convention on Cyber-Crime as well as other relevant legal instruments adopted within the Council of Europe and in other international fora, and with due regard to applicable principles of human rights and liberties, such as freedom

of expression, the Committee shall examine the following subjects with a view to their possible inclusion in a draft additional Protocol to the Convention on Cyber-Crime:

- i) the definition and scope of elements for the criminalisation of acts of a racist or xenophobic nature committed through computer networks, including the production, offering, dissemination or other forms of distribution of materials or messages with such content through computer networks;
- ii) the extent of the application of substantive, procedural and international co-operation provisions in the Convention on Cyber-Crime to the investigation and prosecution of the offences to be defined under the additional Protocol;

The Committee should prepare, on the basis of the indications above, a draft additional Protocol, open to the signature and ratification of Parties to the Convention on Cyber-Crime.

5. Membership of the Committee:

- a. one expert appointed by the Government of each of the following member States:

Albania, Austria, Belgium, Bulgaria, Czech Republic, Denmark, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Norway, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, United Kingdom,

one expert appointed by the Government of each of the non-member States having participated in the drafting of the Convention on Cyber-Crime,

as well as a scientific expert appointed by the Secretariat.

- b. The Council of Europe budget will bear the travel and subsistence expenses of one expert from each of the following member States: Albania, Austria, Bulgaria, Czech Republic, France, Finland, Greece, Hungary, Latvia, Lithuania, Netherlands, Romania, Russian Federation, Slovakia, Slovenia, Spain, as well as those of the scientific expert.

The other experts participate at their Governments' expense.

- c. Members' desirable qualifications: public officials dealing with xenophobic or racist content or computer crime cases, experts having conducted research in this field; persons appointed should also have international experience in the fight against racism and/or in the computer crime area. Preference should be given to members of previous Council of Europe expert committees on computer-related crime.
- d. The Commission of the European Communities and the Secretariat General of the Council of the European Union may send a representative to meetings of the Committee, without the right to vote or defrayal of expenses.
- e. The Bureau of the CDPC may authorise the admission of other observers to the Committee.

6. Working structures and methods: -

7. Duration:

These terms of reference will expire on 30 April 2002.