



COUNCIL OF EUROPE      CONSEIL DE L'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**

**List of decisions taken at the 58th meeting of the PC-OC**

**4 - 6 May 2010**

The PC-OC decided to:

**1. Future activities and priorities of the PC-OC**

- have a discussion on its current and future role, its tasks, its practical tools and working methods, on the basis of the discussion paper PC-OC (2010) 06;
- instruct its Chair and the Secretariat to inform the CDPC about the outcome of its discussions;
- invite the CDPC to:
  - o mandate the PC-OC to draw up a non-binding normative instrument providing for a procedure under which the CDPC could provide advice to the Committee of Ministers concerning non-member States of the Council of Europe which could be invited to accede to the Council of Europe Conventions in the criminal law field;
  - o mandate the PC-OC to elaborate proposals in order to allow practitioners of member States, who are not members of the PC-OC, to submit practical difficulties and questions about the implementation of the relevant conventions through appropriate channels, and to receive feedback about the subsequent discussions held within the PC-OC;
  - o to amend the terms of reference of the PC-OC in order to reflect its role as a forum which discusses practical difficulties faced by States Parties to the conventions on international co-operation in criminal matters and expresses non-binding opinions concerning the interpretation of the provisions of these conventions;

**2. Preparation of normative texts concerning the European Convention on Extradition**

***a) Rule of speciality***

- examine and amend a draft text amending Articles 14 and 15 of the European Convention on Extradition, including a new paragraph 4 of Article 14 as proposed by the PC-OC Mod at its 9<sup>th</sup> enlarged meeting, and an explanatory report thereto;
- adopt this text (see Appendix I), one delegation having expressed reservations as regards Article 14, paragraph 4, and instruct the Secretariat to include this text in a future draft instrument amending the European Convention on Extradition;

**b) Lapse of time**

- examine and amend a draft text amending Article 10 of the European Convention on Extradition as proposed by the PC-OC Mod at its 9<sup>th</sup> enlarged meeting;
- adopt this text (see Appendix II), one delegation having expressed reservations as regards Article 10, paragraph 4, and instruct the Secretariat to include this text in a future draft instrument amending the European Convention on Extradition;

**c) Channels and means of communication**

- take note of the written contributions by the INTERPOL and the additional information provided by a representative of the Secretariat of INTERPOL during its meeting, and thank INTERPOL for this contribution;
- examine and amend a draft text amending the European Convention on Extradition as regards the channels and means of communication, as well as the extradition request and supporting documents, in the light of the discussions held by the PC-OC Mod at its 9<sup>th</sup> enlarged meeting;
- adopt this text (see Appendix III) and instruct the Secretariat to include it in a future draft instrument amending the European Convention on Extradition;
- instruct the Secretariat to prepare a draft explanatory report to these provisions for examination at the next meeting of the PC-OC Mod;

**d) Language issues**

- take note of available replies to a questionnaire regarding language requirements under the European Convention on Extradition (PC-OC (2010) 03), as well as a summary of replies prepared by the Secretariat, and invite delegations not having replied to the questionnaire to do so before 1 July 2010;
- as a practical measure, to complete the information included in its database on national procedures relating to extradition with more detailed information regarding the accepted and preferred languages of States Parties to the Convention;
- instruct the PC-OC Mod to draw up and propose to the plenary amendments to Article 21 of the Convention and to reflect on the feasibility of amending the Convention as regards the requirements for the translation of the supporting documents specified under Article 12, paragraph 2 of the Convention;

**e) Possible consolidation of Additional Protocols**

- examine this issue in the light of working documents prepared by the Secretariat, containing information on the different techniques that could be envisaged for this purpose, the current state of signatures and ratifications of the Protocols, as well as the declarations and reservations made with respect to their provisions;
- agree that the best approach in this respect would be either an additional protocol (possibly superseding the Additional Protocol and the Second Additional Protocol to the European Convention on Extradition), or a revised convention on extradition;
- instruct the Secretariat to prepare, as a first step, a draft Fourth Additional Protocol to the Convention in view of the next meeting of the PC-OC Mod and instruct the latter to continue examining this issue;

**f) Final clauses**

- have a preliminary exchange of views on possible final clauses to be included in the future instrument, and notably on the questions of accession, reservations and amendments;
- instruct the Secretariat to include, in the light of this exchange of views, proposals for final clauses in the draft instrument it will prepare for the next meeting of the PC-OC Mod;
- instruct the PC-OC Mod to examine these proposals, amend them as necessary and submit them to the PC-OC plenary;

**3. Jurisdiction**

- continue its discussions on the issue of jurisdiction as regards international co-operation in criminal matters on the basis of concrete examples submitted by its delegations;
- resume discussions on this item at its next plenary meeting;

**4. Practical problems and concrete cases concerning the implementation of conventions**

- discuss two practical cases brought to its attention by Belgium relating to extradition and to the return of surrendered nationals, and one case submitted by the Czech Republic;

**5. Project on “Effective practical tools to facilitate judicial co-operation in criminal matters”**

- take note of a report on the implementation of the first phase of this project involving the creation of model request forms for mutual assistance and guidelines for practitioners, and to discuss its future involvement in the implementation of this project;
- express its continued support to this project and instruct the Secretariat to keep it informed of any developments regarding its implementation;

**6. Points for information**

- take note of the information provided by the Secretariat on relevant recent developments within the Council of Europe;
- take note of the information provided by Ms Fátima Adélia Pires Martins, Secretary to the European Judicial Network (EJN), concerning the activities of the EJN;
- take note of the information provided by Ms Anna Lipska, representative of the General Secretariat of the Council of the European Union, on developments in the criminal law field within the EU;
- take note of the information provided by Belgium and the Netherlands regarding a convention concluded between these two States under which the Netherlands made available to Belgium a prison located on Dutch territory (Tilburg) for the execution of criminal sentences imposed in Belgium under Belgian law;

**7. Feasibility of drawing up a list of procedural rights in the context of international co-operation in criminal matters**

- have a preliminary discussion on this issue on the basis of the work conducted by the Committee of Experts on Transnational Criminal Justice (PC-TJ) on this issue;
- draw the CDPC's attention to the work of PC-TJ on this issue and express the availability of the PC-OC to contribute to any future initiative on this topic within the limits of its resources, should the CDPC decide to pursue this question;
- take note of the opinion of one delegation that it would not be feasible to draw up such a list;

**8. Dates of the next meetings**

- agree on the following dates for the next meetings of the PC-OC:
  - o 10<sup>th</sup> enlarged meeting of the PC-OC Mod: 28-30 September 2010;
  - o 59<sup>th</sup> meeting of the PC-OC: 3-5 November 2010.

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## Appendix I

### Draft amendments to the European Convention on Extradition concerning the rule of speciality and re-extradition and draft explanatory report

#### Article 14 – Rule of speciality

1. A person who has been extradited shall not be arrested, prosecuted, tried, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to her/his surrender other than that for which she/he was extradited, nor shall she/he be for any other reason restricted in her/his personal freedom, except in the following cases:
  - a. when the Party which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention. The decision shall be taken as soon as possible and no later than 90 days after receipt of the request for consent. Where it is not possible for the requested Party to comply with the period provided for in this paragraph, it shall inform the requesting Party, providing the reasons for the delay and the estimated time needed for the decision to be taken;
  - b. when that person, having had an opportunity to leave the territory of the Party to which she/he has been surrendered, has not done so within 30 days of her/his final discharge, or has returned to that territory after leaving it.
2. The requesting Party may, however:
  - a. carry out pre-trial investigations, except for measures restricting the personal freedom of the person concerned;
  - b. take any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time;
  - c. take any measures necessary to remove the person from its territory.
3. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.
4. By derogation from paragraph 1, the requesting Party may restrict the personal freedom of the extradited person, provided that:
  - a. the requesting Party notifies, either at the same time as the request for consent pursuant to paragraph 1, subparagraph a, or later, the date it intends to start such restriction; and
  - b. the requested Party explicitly acknowledges receipt of this notification.

The requested Party may express its opposition to that restriction at any time, which shall entail the obligation for the requesting Party to end immediately the restriction, including, where applicable, by releasing the extradited person<sup>1</sup>.

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<sup>1</sup> At the 58<sup>th</sup> meeting of the PC-OC, one delegation expressed reservations concerning this paragraph.

## Article 15 – Re-extradition to a third state

1. Except as provided for in Article 14, paragraph 1.b, the requesting Party shall not, without the consent of the requested Party, surrender to another Party or to a third State a person surrendered to the requesting Party and sought by the said other Party or third State in respect of offences committed before his surrender. The requested Party may request the production of the documents mentioned in Article 12, paragraph 2.
2. The requested Party shall take its decision on the consent referred to in paragraph 1 as soon as possible and no later than 90 days after receipt of the request for consent. Where it is not possible for the requested Party to comply with the period provided for in this paragraph, it shall inform the requesting Party, providing the reasons for the delay and the estimated time needed for the decision to be taken.

## Explanatory Report to Article 14

1. The rule of speciality corresponds to the principle that an extradited person may not be arrested, prosecuted, tried, sentenced or detained for an offence other than that which furnished the grounds for his or her extradition. In this context, it is important to underline the responsibility of the requesting State to ensure that the initial request for extradition is as complete as possible and based on all available information, in order to avoid future requests for the extension of extradition to other offences committed prior to the initial request.

2. This article rewords Article 14 of the Convention, by introducing the following amendments:

1. in paragraph 1, the words “proceeded against” are replaced by the words “arrested, prosecuted, tried” and a new sub-paragraph is inserted under paragraph 2, in order to clarify the scope of the rule of speciality ;
2. in paragraph 1, sub-paragraph a, a time limit of 90 days is introduced for the formerly requested State to communicate its decision on the extension of the extradition to other offences.
3. in paragraph 1, sub-paragraph b, the period of 45 days is reduced to 30 days;
4. a new paragraph 4 is introduced, creating the possibility for the requested State to authorize the requesting State to restrict the personal freedom of the extradited person pending its decision on extension of the extradition.

3. As regards point 1, the reason for the change is the fact that there had been many different and sometimes conflicting interpretations of the words “proceeded against” in different legal systems. The replies to a questionnaire sent by the PC-OC indicated notably that the authorities of some States Parties to the Convention had interpreted the words “proceeded against” to cover any measure taken by the authorities of the requesting State, even before a case is brought to trial. This had made it impossible for those States Parties to investigate and collect evidence in relation to offences committed prior to a person's extradition and which are discovered after her/his surrender. This has created significant difficulties in some States Parties or led to the rejection of evidence collected on such offences by courts.

4. The drafters of the Protocol were of the view that such an interpretation did not reflect the intention of the drafters of the Convention, as the requesting Party should not be barred from doing whatever is necessary in order to organise the file for a request to be addressed to the Party which surrendered the person in accordance with paragraph 1, sub-paragraph a, seeking the consent of that Party to the extension of the extradition to offences not covered in the initial extradition request. Such a request for consent should notably be accompanied by the documents mentioned in Article 12, which implies that the requesting Party may initiate or continue proceedings up to the point where it obtains the necessary documents for requesting the other Party's consent, such as a new warrant of arrest.

5. The new wording of paragraph 1, in combination with the new paragraph 2, sub-paragraph a, makes it clear that the rule of speciality does not bar the requesting State from conducting pre-trial investigations and doing what is necessary in order to obtain the documents mentioned under paragraph 1, sub-paragraph a, while still ruling out the possibility for the requesting Party to bring the case to trial or restrict the personal freedom of the extradited person, solely based on these newly discovered offences. In this context, pre-trial investigations are to be understood to comprise intrusive measures such as wiretapping or house searches with regard to the extradited person, as well as confrontation and interrogation of persons other than the extradited person in connection with these additional offences. The extradited person may be interrogated or confronted insofar as this investigative measure does not imply coercion, i.e. the restriction of the personal freedom of the extradited person. Article 14 should also not prevent the requesting State from summoning the extradited person for the purpose of gathering evidence in order to institute proceedings against other persons who are not covered by the rule of speciality.

6. The concept of “restriction of personal freedom” is to be interpreted so as to include not only deprivation of liberty in accordance with Article 5 of the European Convention of Human Rights, but also restrictions on “liberty of movement”, in accordance with Article 2 of Protocol No. 4 thereto. Thus, a ban to leave the territory of the requesting State would for example qualify as a restriction of personal freedom.

#### ***Paragraph 1, sub-paragraph a***

7. As regards point 2, the PC-OC considered that the introduction of a time limit for the (formerly) requested State would be an added value in the context of the modernisation of the Convention. This is linked to the observation of the PC-OC that extension of extradition to new offences is sometimes characterised by co-operation which is less prompt compared to the initial request and can cause significant delays, which causes problems in the criminal procedures of requesting States and may also have negative consequences for the Human Rights of the defendant. The PC-OC therefore agreed that the introduction of such a time limit would have a clear added value.

8. While some States Parties to the Convention follow the same procedure for giving consent to the extension of the extradition decision as they do for the initial extradition request, the PC-OC observed that certain elements, such as the presence of the person already in the requesting State or the technical nature of many extension requests, may allow for a speedy decision on extension. The drafters thus agreed that a time limit of 90 days would be sufficient for the (formerly) requested State to take its decision on consenting to the extension of extradition.

9. However, in certain very complicated cases, it might not be possible for the requested State to treat the request for consent within 90 days, in which case this period can be extended. This nonetheless constitutes progress vis-à-vis the mother Convention, as in such cases the requested Party would have an obligation to inform the requesting Party of the reasons for the delay and the time needed for reaching a decision. This would reduce uncertainty for the requesting State and limit the disruption to its criminal procedure.

#### ***Paragraph 1, sub-paragraph b***

10. The amendment to paragraph 1, sub-paragraph b concerns the delay following the final discharge of the extradited person after which the rule of speciality ceases to apply. The Convention provides that the rule of speciality shall not apply if the person has not left, having had the opportunity to do so, the territory of the requested Party within 45 days of the person's discharge or if the person has returned to that territory after leaving it. The drafters considered that the 45-day period had no objective justification 50 years after the Convention, given that it has become much easier to travel and leave the territory of States Parties. They therefore agreed to restrict this delay to 30 days.

11. This provision also contains two conditions which have to be fulfilled for the rule of speciality to cease to apply. The person must have been “finally discharged” and had the “opportunity to leave the territory”.

12. The term finally discharged should be interpreted in line with the meaning attributed to that term under the Additional Protocol to the Convention on the Transfer of Sentenced Persons. Paragraph 32 of the explanatory report to that Convention provides that:

“The expression “final discharge” (in French: “élargissement définitif”) means that the person's freedom to leave the country is no longer subject to any restriction deriving directly or indirectly from the sentence. Consequently, where, for instance, the person is conditionally released, that person is finally discharged if the conditions linked to release do not prevent him or her from leaving the country; conversely, that person is not finally discharged where the conditions linked to release do prevent him or her from leaving the country.”

13. With regard to the words “opportunity to leave the territory”, and as clarified in the original explanatory report to Article 14 of the Convention, the person must not only be free to leave the territory, but also not be hindered from doing so for other reasons (for example, for serious health reasons).

#### **Paragraph 4**

14. The rule of speciality prohibits any restriction of the personal freedom of the extradited person for offences committed prior to his or her extradition, other than those which furnished the grounds for this extradition. However, there might be rare cases where this principle could potentially create an impediment to the pursuit of the ends of justice, even where there is no oversight on the side of the requesting Party.

15. A typical example would be a situation where the requesting Party discovers new elements after the extradition implicating the extradited person in connection with an offence not included in the original extradition request, on the basis of new evidence or new links to existing evidence. If the release of that person from custody for the initial offence is imminent, the requesting Party may have to release the person before it can obtain the consent from the requested Party to extend the extradition to the new offence.

16. Paragraph 4 introduces a special procedure for mitigating the rule of speciality for such exceptional cases, which allows the requesting Party to continue restricting the personal freedom of the extradited person until the requested Party takes its decision on consent pursuant to paragraph 1, sub-paragraph a.

17. According to this procedure, in order to restrict the personal freedom of the extradited person on the basis of new offences, the requesting Party must notify its intention to do so to the requested Party. This notification must take place either at the same time as the request for consent pursuant to paragraph 1, sub-paragraph a, or at a later stage. No restriction on the basis of new offences can take place outside the knowledge of the requested State and without its acquiescence, which is tacitly given by acknowledging the receipt of the notification of the requesting Party of its intention to proceed to such a restriction.

18. This acquiescence allows the requesting Party to take measures on the basis of its warrant of arrest for new offences, according to its own law and subject to its procedural guarantees and to the control of its domestic courts. However, the requested Party may at any time, including simultaneously with its acknowledgement of receipt or later, express its opposition to such a restriction of personal freedom. In such cases, the requesting Party must comply either by abstaining from taking the measure restricting the personal freedom of the extradited person, or by putting an immediate end to the measure in question.

19. The drafters considered that the opposition of the requested Party pursuant to this paragraph may be only limited to certain types of restriction. For example, the requested Party could inform the requesting Party that the latter may not detain the person in question, but use alternative measures restricting her/his personal freedom, such as a house arrest or a ban to leave the country.

## Appendix II

### Draft amendments to the European Convention on Extradition concerning lapse of time and draft explanatory report

#### Article 10 – Lapse of time

1. Extradition shall not be granted when the prosecution or punishment of the person claimed has become statute-barred according to the law of the requesting Party.
2. Extradition shall not be refused on the ground that the prosecution or punishment of the person claimed would be statute-barred according to the law of the requested Party.
3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it will not apply paragraph 2:
  - a. when the request for extradition is based on offences for which that State has jurisdiction under its own criminal law; and/or
  - b. if its domestic legislation explicitly prohibits extradition when the prosecution or punishment of the person claimed would be statute-barred according to its law.
4. Any Party having made a declaration pursuant to paragraph 3 of this Article shall, when determining whether prosecution or punishment of the person claimed would be statute-barred according to its law, take into consideration any acts of interruption and any events suspending time-limitation occurring in the requesting Party, in so far as acts or events of the same nature have a similar effect in the requested Party<sup>2</sup>.

#### Explanatory Report to Article 10

1. This Article is intended to replace the original Article 10 of the Convention which established lapse of time, under the law either of the requested Party or the requesting Party, as a mandatory ground for refusal. The current text takes account of changes that occurred as regards international co-operation in criminal matters since the opening to signature of the Convention in 1957, and notably the relevant provision of the Convention of 23 October 1996 relating to extradition between the member States of the European Union (Article 8).
2. The modified Article draws a distinction concerning immunity by reason of lapse of time from prosecution or punishment, depending on whether it obtains according to the law of the requesting or the requested Party.
3. As regards the law of the requesting Party, lapse of time remains a mandatory ground for refusal in accordance with paragraph 1 of this Article. The drafters considered excluding this as a ground for refusal, given that the requesting State should, as a matter of course, not request the extradition of a person whose prosecution or punishment is statute-barred under its own law. However, they decided to keep this ground for refusal for the rare cases where a Party fails to withdraw an extradition request, despite this immunity.
4. Thus, the requested Party has an obligation to consider whether there is lapse of time under the law of the requesting State before deciding on extradition. However, it is not for the requested Party to determine whether immunity by reason of lapse of time had been acquired in the territory of the requesting Party. In cases where it has reasons to believe that such immunity might have been acquired, it should request information on this question directly from the requesting Party itself and the requesting Party should promptly provide the required information. The drafters

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<sup>2</sup> At the 58<sup>th</sup> meeting of the PC-OC, one delegation expressed reservations concerning this paragraph.



agreed that this information should preferably take the form of a motivated statement, specifying the reasons for which there is no lapse of time with references to the relevant provisions of its law, where appropriate.

5. The requesting Party should provide this information together with the extradition request, without an explicit request to that effect from the requested State being necessary (see also Article 12, paragraph 2.b).
6. As regards the law of the requested Party, paragraph 2 of Article 10 provides that lapse of time shall not serve as a ground for refusal in principle. This is in line with developments in international law<sup>3</sup>, as well as European Union law<sup>4</sup>, which have taken place since 1957. The establishment of the law of the requesting Party as the only reference point for lapse of time considerations corresponds to a higher degree of mutual trust between States Parties, as well as to a reaffirmation of the purpose of international co-operation in criminal matters as helping requesting States to pursue the ends of justice.
7. Paragraph 3 qualifies the principle established under paragraph 2, by allowing the requested Party to invoke lapse of time under its own law as an optional ground for refusal in two hypotheses:
  - the requested Party has jurisdiction on the relevant offences under its own criminal law;
  - its domestic legislation explicitly prohibits extradition in case of lapse of time under its own law.

However, the possibility of doing so is conditional on a declaration to that effect having been made at the time of signature or when depositing the instrument of ratification, acceptance, approval or accession.

8. Paragraph 4, which is intended to apply only in respect of States having made a declaration under paragraph 3, makes it obligatory for those States to take account of acts of interruption and events suspending time-limitation which have occurred in the requesting State, to the extent that such acts and events have the same effect in the requested State. This principle follows from the Resolution (75) 12 of the Committee of Ministers on the practical application of the European Convention on Extradition.

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<sup>3</sup> For example, the UN Model Treaty on Extradition and its revised Manual.

<sup>4</sup> Notably, the Convention implementing the Schengen Agreement (19 June 1990) and the Convention of 23 October 1996 drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the member States of the European Union.

### **Appendix III**

#### **Draft amendments to the European Convention on Extradition concerning the request, supporting documents, channels and means of communication**

##### **Article 12 - The request and supporting documents**

1. The request shall be in writing. It shall be submitted by the Ministry of Justice or other competent authority of the requesting Party to the Ministry of Justice or other competent authority of the requested Party. A State wishing to designate another competent authority than the Ministry of Justice shall notify the Secretary General of the Council of Europe of its competent authority at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, as well as of any subsequent changes relating to its competent authority.
2. The request shall be supported by:
  - a. a copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;
  - b. a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions, including provisions relating to lapse of time, shall be set out as accurately as possible; and
  - c. a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity, nationality and location.
3. Article 5 of the Second Additional Protocol to the Convention shall cease to apply for any State becoming a Party to this Protocol.

##### **Article 12bis – Channels and means of communication**

1. For the purpose of this Convention, communications may be forwarded by using electronic or any other means affording evidence in writing, under conditions which allow the Parties to ascertain their authenticity, as well as through the International Criminal Police Organization (Interpol) channel. In any case, the Party concerned shall, upon request and at any time, submit the originals or authenticated copies of documents. The use of the diplomatic channel is not excluded.
2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that, for the purpose of Article 12 and Article 14, paragraph 1, subparagraph a, it will require the original or authenticated copy of the request and supporting documents in all cases.