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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)

Mutual assistance in criminal matters
Service of documents to the defendant under penalty of fine

Discussion paper prepared by Ms Merja NORROS (Finland)

From: Delegation of Finland

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Practical difficulties in applying conventions - Service of documents to the defendant under penalty of fine

According to statistics of the Finnish Central Authority the majority of the requests for legal assistance concern service of documents. This is everyday routine that rather seldom has been discussed in the PC-OC. Especially Chapter III of the European Convention on Mutual Assistance in Criminal Matters deals with the service of documents. In addition, the Second Additional Protocol makes it possible to send requests to the competent authority in the receiving authority (Article 4) or directly by post to the addressee (Article 16). Finland has not yet ratified the Second Additional Protocol of the MLA Convention but a working group has been established to prepare its ratification and implementation.

Regarding appearance of persons to the courts, Article 8 states that a witness or expert who has failed to answer a summons to appear in the court shall not be punished, even if the summons contains a notice of penalty. Obviously, it is a principle of international law to regard foreign witnesses as distinguished guests of the court.

Regarding *defendants*, the above mentioned practice may not be so clear. For instance, Finnish courts may in cross border cases include in the summons a threat for the defendant (accused) to appear in the court. In other words, if the person does not appear, the fine will be imposed for his absence. This is reasonable, because currently these financial penalties are enforceable between many European states. However, according to Finnish experience, some requested states do not accept documents with such kind of notices of penalty to the defendant and return them to the requesting state.

Another thing is that the documents to be served may also indicate that, the criminal case may be dealt (in substance) in a Finnish court even without the presence of the defendant (supposing he has been duly summoned), and a punishment imposed. According to Criminal law this procedure is possible in minor cases only, and the threat for punishment and maximum penalty is informed before hand to the defendant, so he can decide whether to go to court or not.

Finland would appreciate, if the participants of the PC-OC would prepare themselves to discuss the following questions:

1. Obviously, the states that have ratified the Second Additional Protocol allow service by post in cross border cases. If your state has not ratified the Protocol – is it nevertheless possible to accept the sending of documents directly to the addressee living in your country?
2. Would your state execute an incoming request for service that includes *a notice of penalty* for the *defendant* to appear in the court in the requested state?
3. Does your state have a practice to send abroad summonses that include a threat to the defendant to consider his case even in his absence (but supposing the person has been duly summoned)? Are there limits in how serious crimes this procedure may be used?