



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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PC-OC (2012) 13

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 63rd meeting of the PC-OC
Under the Chairmanship of Mr Per Hedvall (Sweden)

Strasbourg
13-15 November 2012

1 Adoption of the agenda

The PC-OC decided to adopt the agenda as reflected in document PC-OC(2012)OJ2 rev.

2. Finalisation of draft guidelines on practical measures to improve co-operation in respect of transfer of proceedings including a model request form

The PC-OC considered the draft guidelines and the appended model request form proposed by the PC-OC Mod (PC-OC Mod (2012) 01 Rev 3)

and decided to:

- adopt the guidelines and the model request form with some amendments;
- present the guidelines and model request form to the CDPC with the proposal to publish them as a practical PC-OC tool for practitioners, taking into account that the guidelines are of a technical nature and might need to be regularly updated;
- subject to the approval of the CDPC, instruct the Secretariat to publish the guidelines and model request form on the PC-OC website.

3. Presentation and content of the PC-OC website

The PC-OC took note of the information provided by the Secretariat about the development of the website including in particular the publication of the Index of case law by the European Court of Human Rights (ECtHR) of relevance for the application of the European Conventions on international judicial co-operation in criminal matters. The PC-OC also took note of the opinion of the PC-OC Mod regarding the inclusion in the index of decisions on admissibility and decided:

- not to include decisions on admissibility in the index.

- With regard to the draft summaries of relevant case law of the ECtHR

The PC-OC considered the draft summaries (contained in Document PC-OC (2011)21rev4, thanked Mr Dupraz (France), Ms Goeth-Flemmich (Austria), Mr Kubicek (Czech Republic), and Mr Verbert (Belgium) for their excellent work, discussed possible editorial improvements to the document and decided to:

- ask the authors, in co-operation with the Secretariat and the Chair, to finalise the document as discussed;
- agree on having the names of the authors published on the cover page;
- instruct the Secretariat to publish the index and the summaries on the PC-OC website;
- invite members of the PC-OC to inform the Secretariat of any further decisions of the ECtHR of relevance for international co-operation in criminal matters;
- instruct the PC-OC Mod to ensure the regular updating of the document on case law.

- With regard to the proposals to improve country information

The PC-OC considered the inventory of country information available on the PC-OC website as contained in document PC-OC(2012)09, recalled the importance that the PC-OC website contains complete and updated country information for the use of practitioners, and decided to:

- reiterate its call on all members and states parties to the European conventions on international co-operation in criminal matters to submit and when necessary send an update of the required information to the Secretariat as regards, in particular, the list of officials involved in the practical application of the conventions on extradition, mutual legal assistance in criminal matters and transfer of sentenced persons (PC-OC INF 6), the network of single points of contact and the list of competent authorities in respect of the application of Articles 13 and 15 of the European Convention on Mutual Assistance in Criminal Matters;
- call on all members and states parties to the European conventions on international co-operation in criminal matters to send links to websites of national central authorities or judicial bodies involved in international co-operation in criminal matters to the Secretariat in view of their publication on the website of the PC-OC;
- instruct the Secretariat to amend the inventory of country information as indicated by the PC-OC and keep it updated;
- instruct the PC-OC Mod to consider the inventory of country information available and report to the plenary on which information should be maintained and the reasons why.

- With regard to the access to and use of the forum

The PC-OC considered the request by Eurojust to be granted an access to the online forum reserved for members of the PC-OC and representatives of observer states parties to the conventions that are within the remit of the PC-OC and decided:

- not to open up access to other interested observers at the moment, taking into consideration that the forum is at an early stage of development.

4. Possible ways of allowing practitioners to submit questions to the PC-OC

The PC-OC welcomed the publication online and in paper form of a coloured leaflet containing information on the PC-OC for distribution to national practitioners involved in international co-operation in criminal matters. The PC-OC had an exchange of views on possible good practices for dissemination at a national level and underlined that it is essential that the leaflet be available also in non official languages of the Council of Europe. It was decided to:

- encourage members to translate the text into their national languages and submit it to the Secretariat for publication, subject to applicable Council of Europe publication rules as well as available budgetary resources, as an “unofficial translation”, on the PC-OC website and as a paper version;
- resume the discussion on dissemination at future meetings so as to exchange information on experiences and best practices.

5. Practical problems and concrete cases concerning the implementation of conventions

- a. With regard to recent developments and forum discussions related to extradition, mutual assistance and transfer of sentenced persons

The PC-OC took note of the recent developments presented by PC-OC Rapporteur Ms Barbara Goeth-Flemmich (Austria) on transfer of sentenced persons. It noted in particular the information on the implementation by the EU member States of the Framework decision on the transfer of sentenced persons. Ms Goeth-Flemmich also informed the PC-OC of difficulties of implementation encountered in some states Parties to the Additional Protocol to the Convention on the Transfer of Sentenced Persons, in cases where the person concerned did not give his or her consent for the transfer. She proposed that the PC-OC discuss this issue at a future meeting, and consider the possibility to gather information on national legislation and procedures with regard to conditional release and to measures involving deprivation of liberty (for example for mentally ill persons, dangerous offenders etc) . The PC-OC decided to:

- invite Parties to the Additional Protocol to the Convention on the Transfer of Sentenced persons to send examples of practical difficulties encountered to Ms Goeth-Flemmich and to the Secretariat;
- instruct the Secretariat to collect information from PC-OC members on national legislation and procedures with regard to conditional release and measures involving deprivation of liberty, in view of the special session foreseen on transfer of sentenced persons;
- instruct the PC-OC Mod to consider the information received and to report back to the plenary.

The PC-OC also listened with interest to the information presented by its Rapporteur on extradition, Mr Erik Verbert (Belgium), and welcomed the developments as regards his recent contacts with the authorities of South Africa.

- b. With regard to the feasibility of developing guidelines on the use of video conferences in the context of mutual legal assistance

The PC-OC considered the need and feasibility of developing guidelines dealing with the technical aspects of the use of video conferences in the context of mutual legal assistance, took note of the conclusions of the PC-OC Mod and decided:

- that given the rapid evolution of technology and the lack of technical knowledge within the PC-OC it would not be useful or feasible at this stage to develop such guidelines.

The PC-OC exchanged experiences on the use of video conferences and decided:

- to continue discussions on this issue at its next meeting during a special session devoted to mutual assistance in criminal matters;
- instruct the Secretariat to remind all experts to send in proposals on other issues to be discussed during the special session;
- to instruct the PC-OC Mod to prepare the special session.

- c. With regard to the draft note on discussions held on “the relationship between extradition and deportation/expulsion” and possible follow up

The PC-OC considered the draft note as proposed by the PC-OC Mod (PC-OC(2012)08rev) and decided to:

- approve the note with one amendment;
- instruct the Secretariat to publish the note on the public website of the PC-OC.

The PC-OC furthermore considered the need and feasibility of further follow-up and decided, taking into account the viewpoint of the PC-OC Mod, that at this stage, further follow-up would not be necessary.

- d. With regard to the draft questionnaire on “*in absentia* cases” in connection with Article 3 of the Second Additional Protocol to the European Convention on Extradition

The PC-OC considered the draft questionnaire as proposed by the PC-OC Mod (document PC-OC(2011)22rev5), agreed on the text with some amendments and decided to:

- instruct the Secretariat to send it out to all PC-OC members and parties to the European Convention on Extradition and make a summary of the answers received;
- instruct the PC-OC Mod to consider the replies received and make proposals for follow-up.

- e. With regard to other issues

1. The PC-OC had a discussion on a question addressed to it by the CDPC Bureau and raised by two member states concerning the application of Article 12 of the Council of Europe Convention on the Transfer of Sentenced Persons.

The PC-OC concluded that it is their common understanding that Article 12 allows both the sentencing state and the administering state to grant pardon, amnesty or commutation of the sentence. Several experts underlined that the aim of the Convention is to allow sentenced persons to serve the remainder of their sentence in their own society so as to facilitate their rehabilitation and that the successful application of this Convention requires a climate of mutual trust between parties. A legal question was raised about the possible application of the reciprocity principle to reservations and declarations under this Convention.

The majority of the PC-OC members present decided:

- that expertise on international public law was needed to address this question;
- to instruct the PC-OC Mod to take into account the discussion on the issue raised in the general context of further consideration of problems related to the implementation of the Convention on the Transfer of Sentenced Persons.

The expert from Azerbaijan opposed these decisions.

2. The PC-OC had an exchange of views and experiences on a question raised by Ms Merja Norros (Finland) with regard to the service of documents to defendants under penalty of fine (discussion paper PC-OC(2012)11) in application of the Convention on mutual assistance in criminal matters and decided to:

- instruct the PC-OC Mod to consider possible follow-up to this issue and report back to the plenary at its next meeting, in the context of the special session that will be devoted to mutual assistance in criminal matters.

3. The PC-OC also heard a question raised by the Mr Mario Affentranger (Switzerland) with regard to the possibility of requesting an audition of prosecuted persons of Russian nationality from the Russian Federation in application of the Convention on mutual assistance in criminal matters. The PC-OC took note of the information provided by the Russian expert as regards the planned amendments to Russian legislation on mutual assistance as well as on alternative solutions available for the time being.

6. Special session on issues concerning the implementation of the European Convention on Extradition

Due to disturbances in the building, the special session had to be cancelled.

The PC-OC heard nevertheless an intervention on the extradition system in Korea by Mr Sang Joon Cho, Senior Prosecutor and Director of the International Criminal Affairs Division of the Ministry of Justice of the Republic of Korea and had an exchange of views.

The PC-OC decided to discuss at a future meeting a question raised by Ms Joana Ferreira (Portugal) concerning extradition and the effects of violation of immunity provided by the rule of speciality.

7. Election of the Chair and the vice-Chair of the Committee

Further to the expiry of the second and last term of the chairmanship of Mr Per Hedvall (Sweden) and vice-chairmanship of Mr Erik Verbert (Belgium), the PC-OC elected Ms Selma de Groot (Netherlands) as Chair and Mr Per Hedvall (Sweden) as its vice-Chair for a term of one year, starting in 2013.

The PC-OC expressed its gratitude to Mr Hedvall and Mr Verbert for the excellent work accomplished over the last two years.

8. Composition of the PC-OC Mod

The PC-OC decided to renew the composition of its working group the PC-OC Mod, which is in charge of executing the tasks entrusted to it, to ensure continuity between meetings and to prepare the next meeting. As from 2013, the PC-OC-Mod would be composed of the Chair, the vice-Chair and the following 7 elected experts:

Mr Stéphane Dupraz (France)
 Ms Barbara Goeth-Flemmich (Austria)
 Mr Miroslav Kubicek (Czech Republic)
 Mr Eugenio Selvaggi (Italy)
 Ms Malgorzata Skoczelas-Raczkosa (Poland)
 Mr Erik Verbert (Belgium)
 Mr Vladimir Zimin (Russian Federation).

All other PC-OC members are free to participate without defrayal of expenses.

9. Points for information and any other business

The PC-OC took note of the information provided by:

- Mr Jan Kleijssen, Director of the Directorate of information society and action against crime, and in particular on the opening for signature of the Fourth Additional Protocol of the European Convention on Extradition on 20 September 2012 as well as on the ongoing review of the Council of Europe Conventions by the Rapporteur Group on Legal Co-operation (GR-J);

- Mr Carlo Chiaromonte, Head of the Criminal Law Division, on the Resolution adopted at the 31st Council of Europe Conference of Ministers of Justice which took place in Vienna (Austria) on 19-21 September 2012, as well as on the activities of the CDPC;
- the Secretary to the PC-OC on recent signatures and ratifications of the Third and the Fourth Additional Protocols to the European Convention on Extradition and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters;
- Ms Eleni Loizidou (Cyprus), on behalf of the EU Presidency, on recent activities and developments of interest to the PC-OC in the European Union;
- Ms Ianina Lipara, representative of the European Judicial network (EJN), as regards the development and improvement of their website.

10. Dates of the next meetings

The PC-OC decided to hold its plenary meetings in 2013 from 28 to 30 May and from 26 to 28 November.

The meetings of the PC-OC Mod would take place from 6 to 8 March and from 9 to 11 October 2013.