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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 31 January / janvier 2005
[PC-TJ/DOCS 2005 / PC-TJ (2005) 02 ADD]

PC-TJ (2005) 02
ADDENDUM

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Committee of Experts
on Transnational Criminal Justice
(PC-TJ)

2nd meeting

Strasbourg,
31 January - 2 February 2005

EXECUTIVE SUMMARY

Report

“The Legal Protection of the Accused from a comparative view”

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1. The substantive rules, i. e. legal conditions of cooperation, focus more and more the accused and its legally protected interests. Human rights clauses in all facettes are becoming much more common than 20 years ago.
2. Discussion should concentrate today on procedural questions.
3. a) Procedural rights to be discussed and taken into account are the following:

As far as the situation in a *requested* state is concerned, the questionnaire focussed on the following fair trial rights:

- right to be informed by then authorities of the requested state about the nature and cause of the accusation in the requesting state and about the privilege against self-incrimination,
- right to counsel,
- right to look into the complete file/to disclosure,
- right to be heard/to submit written statements,
- evidence, e.g., the subject matter (i. e.: grounds for refusing extradition) to be covered by the evidence, the right of the individual to bring evidence, standard and burden of proof (including the presumption of innocence),
- right to have conditions or limitations inserted in the granting decision,
- right to require the granting authority or the court to render its decision within reasonable time,
- right to be informed about the decision of the granting authority or the court,
- right to appeal,
- right to compensation.

As far as the situation in a *requesting* state is concerned:

- Does the fact that the rules of procedure in the requested state have not been observed have impact on the use of the results of a request?
- Should there be a transnational exclusionary rule? If so, what should that rule be? When and how should it apply?
- Adherence to conditions imposed by the requested state: Has the individual a possibility to force the authorities of your state to adhere to conditions imposed by the requested state? If so, how can this be done? Can an individual raise the point to a court and force respect of conditions?

b) Proceedings in transnational cases have the character of as well criminal as well as administrative proceedings. These rights have to be applied regardless of whether they are in merely national proceedings applied only to criminal proceedings.

4. The decisive starting point is the existence of a granting procedure:
- The most significant procedural lacks are to be found in this procedure.
 - The granting procedure exists in addition to a mandatory or optional admissibility procedure done by a court.

2 solutions are possible:

- a) Abolish the granting procedure at all (example: the European Arrest Warrant)
- b) Provide for all the judicial guarantees mentioned supra 3 within the granting procedure.

5.

As far as court procedures are concerned:

- a) The judicial guarantees mentioned supra 3 have to be applicable.
- b) The courts have to judge on all substantive and procedural subjective rights of the individual (see new law of Austria) and leave no such right to be decided upon only by the granting authority without a court's control (see optional grounds for refusal: life-long sentence, trial in absentia).