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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 66th meeting of the PC-OC  
under the Chairmanship of Ms Joana Gomes Ferreira (Portugal)**

**Strasbourg  
19-21 May 2014**

**1. Opening of the meeting and adoption of the agenda**

The PC-OC took note of the opening remarks by the Chair and adopted the agenda as reflected in document PC-OC (2014)OJ1.

**2. Points for information**

The PC-OC took note of the following information of particular relevance to its work:

- its terms of reference for 2014-2015;
- the activities of the CDPC presented by Mr Carlo Chiaromonte, Head of the Criminal Law Division and Secretary to the CDPC, in particular the expected adoption of and follow up to the draft White Paper on Transnational Organised Crime as well as the preparation of model provisions as regards international cooperation in criminal matters;
- the presentation by Mr Roberto Rivello, manager of the European Programme on Human Rights for Legal Professionals (HELP), on the outcome and follow up to the first working group meeting on international cooperation in criminal matters held on 6 May 2014. The working group, established by the HELP programme in cooperation with the PC-OC, will develop an online training for practitioners in international cooperation in criminal matters with an emphasis on human rights aspects, in three or four member states (Poland, Portugal, Romania and Turkey);
- recent signatures and ratifications and in particular the entry into force, on 1 June 2014, of the Fourth Additional Protocol to the European Convention on Extradition in respect of Albania, Latvia and Serbia.

### **3. Review of Council of Europe Conventions within the remit of the PC-OC**

The PC-OC took note of the letter addressed on 25 March 2014 by the Chair of the CDPC to the Chair of the PC-OC, inviting the Committee to provide concise and written feedback to the CDPC on the implementation or assessment of the conventions for which it is responsible by the end of 2015. It was recalled that this letter had been written as a follow up to the review of Council of Europe conventions conducted by the Committee of Ministers.

The PC-OC discussed the issue and decided to ask the Chair, in consultation with the vice-Chair and the Secretariat, to draft a reply on the basis of the discussions held for consideration by the PC-OC Mod and approval by the plenary at its next meeting.

### **4. Presentation and content of the PC-OC website**

The PC-OC discussed the general presentation of its website, and in particular:

- the availability of its country information and useful tools for practitioners in languages other than English and French;
- the visibility of the Conventions within the remit of the PC-OC, other than those dealing with extradition, mutual assistance and transfer of sentenced persons.

The Committee decided to ask the PC-OC Mod to make proposals based on the discussions held.

#### **a. Finalisation of the improved template for country information as regards the transfer of sentenced persons**

The PC-OC considered the revised template for the publication of country information regarding the implementation of the Convention on the Transfer of Sentenced Persons, as proposed by the PC-OC Mod [Doc PC-OC Mod (2013)10rev2] and decided to:

- approve the template regarding the Convention on the Transfer of Sentenced Persons, as amended in Doc PC-OC Mod (2013)10 rev3, and instruct the Secretariat to post it on the website in replacement of the former template;
- invite all Parties to this convention to fill in this new template and to send it to the Secretariat by 1 September 2014 for publication on the PC-OC public website.

The PC-OC furthermore noted that 26 States had filled in the revised templates as regards extradition and mutual assistance and, underlining the importance of this country information, decided to invite those that had not yet done so to send them to the Secretariat for publication by 1 September.

#### **b. Case-law of the European Court of Human Rights**

The PC-OC was pleased to hear that the index and summaries of the case-law of the European Court of Human Rights (PC-OC (2011)21 rev 7) is now referred to on the website of the Court and that it is soon to be updated.

The Committee decided to:

- invite all experts to send proposals for new cases to be indexed or summarised in this document to the Secretariat;
- thank the PC-OC Mod for ensuring the update of the document, and Ms Malgorzata Skoczelas (Poland) for coordinating the different contributions.

### **5. Convention on the Transfer of Sentenced Persons and the Additional Protocols thereto**

**a. Presentation by the PC-OC Rapporteur on transfer on recent developments and forum discussions**

The PC-OC took note of the presentation by Ms Barbara Goeth-Flemmich (Austria) as regards:

- the decision of the ECHR regarding Willcox and Hurford v. United Kingdom (43759/10 & 43771/12);
- the difficulties encountered by EU member States in the implementation of the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

The PC-OC thanked Ms Goeth-Flemmich for the information provided and decided to reiterate its call to all member and observer states to actively participate in forum discussions.

The PC-OC also expressed its concern about prison overcrowding and deterioration of conditions of detention in some member states which might amount to a violation of human rights and decided to inform the CDPC that those considerations increasingly obstructed transfer and extradition procedures.

**b. Proposals to improve the functioning of transfer procedures as a follow-up to the special session on the Convention on the Transfer of Sentenced Persons and its Additional Protocol during the 65th plenary meeting**

During its 17th meeting, the PC-OC Mod considered the issues addressed and proposals made during the special session on the transfer of sentenced persons and made proposals for follow-up to the plenary. The PC-OC considered these proposals and agreed with the findings of the PC-OC Mod as regards the main obstacles to a speedy and successful implementation of the Convention and the Additional Protocol thereto.

It also shared the view of the PC-OC Mod that the Additional Protocol does not foresee the absence of the consent of the person concerned as a valid ground for refusal to transfer.

The committee decided to invite the CDPC to give a mandate to the PC-OC to prepare a draft binding instrument, or binding instruments, which could address the issues mentioned hereafter.

As regards the Convention:

- time-limits as regards: procedures; the revocation of consent; the actual transfer;
- widening the scope of the Convention to persons who returned voluntarily to their country of origin before having served their sentence;
- translation requirements;
- organisation and cost of the actual transfer;
- non-payment of fines or compensation to victims;
- the provision of information on the execution of the sentence by the administering state.

As regards the Additional Protocol thereto:

- deletion of the consequential link between the expulsion or deportation order and the sentence imposed in Article 3, paragraph 1 of the Additional Protocol;
- introduction of time-limits as regards the application of the rule of speciality in the Additional Protocol.

The PC-OC took note that the expert from Azerbaijan does not support further discussions as regards the widening of the scope of the Convention to persons who returned voluntarily to their

country of origin before having served their sentence and as to the provision of information on the execution of the sentence by the administering state.

The PC-OC furthermore decided to:

- have further discussions as regards the possibilities of transferring mentally ill persons who have committed a crime and whose detention is imposed by means other than by a sentence imposed by judicial authorities;
- publish on its website the replies received to the questionnaires regarding the implementation of the Convention on the Transfer of Sentenced Persons and its Additional Protocol [Doc. PC-OC(2013)10 rev and 10ADDrev].

## **6. European Convention on Extradition and the Additional Protocols thereto**

### **a. Draft note on criteria to assess whether a judgment in absentia and additional guarantees satisfy the rights of defence (in connection with Article 3 of the Second Additional Protocol)**

The PC-OC considered the background paper prepared by the Secretariat in cooperation with Ms Barbara Goeth-Flemmich (PC-OC Mod(2014)02 rev) and in particular its appendix 2 containing a draft note to assist practitioners in assessing whether a judgment in absentia satisfies the rights of defence in connection with Article 3 of the Second Additional Protocol.

The Committee decided to approve the draft note and to post the above mentioned document on its website as a useful tool for practitioners

### **b. Interaction between extradition and asylum; practical problems encountered and examples of good practice**

The PC-OC considered the practical problems and examples of good practice reported by member states in this field [Doc PC-OC Mod (2013)06rev2.] as well as the findings by the PC-OC Mod.

The Committee agreed with the PC-OC Mod that problems encountered by member states as regards the interaction between extradition and asylum procedures could be diminished by enhancing the exchange of information and communication between the different authorities concerned at national level but also at international level.

The PC-OC decided to:

- inform the CDPC of the importance of the problems caused by the interaction between extradition and asylum procedures;
- invite experts who hadn't done so to provide further examples of practical problems and good practice in this field by 1 September 2014 so as to allow further discussion on this issue.

### **c. Reference moment to be applied when considering double criminality and interpretation *in abstracto* or *in concreto***

The PC-OC considered the 34 replies to the questionnaire on the reference moment to be applied when considering double criminality as regards extradition requests [Doc PC-OC (2013) 12 rev2], reiterated the importance of this question as well as the divergence in views and decided to:

- discuss this issue further at the special session on extradition;
- invite experts who hadn't done so to reply to the above mentioned questionnaire;
- publish the replies on the PC-OC website as a useful tool for practitioners.

#### **d. Other issues**

No other issues were raised.

### **7. Special session on Extradition**

The PC-OC had a special session on extradition. After an opening speech by Mr Per Hedvall (Sweden), the PC-OC heard a presentation by Mr Johannes Silvis, Judge at the European Court of Human Rights, on the case-law of the Court as regards extradition procedures with a special emphasis on diplomatic assurances. The presentation was followed by a discussion, including the effect of interim measures issued on the basis of rule 39 of the Court.

In the afternoon, two workshops were held simultaneously: workshop 1 addressed the application of the double criminality principle, on the basis of a discussion paper [PC-OC (2014)04] prepared by the moderator, Mr Yitzchak Blum (Israel); workshop 2 addressed the refusal of extradition requests and possible solutions, on the basis of a discussion paper [PC-OC (2014)05] prepared by the moderator, Mr Eugenio Selvaggi (Italy).

The rapporteurs to the workshops, Ms Catalina Neagu (Romania) and Ms Anniken Barstad Waaler (Norway), presented the outcome of the workshops to the plenary. These presentations were followed by a discussion.

In conclusion to this special session, the PC-OC decided to:

- publish the intervention made by Mr Johannes Silvis on its website;
- ask the rapporteurs to send their report to the Secretariat for publication;
- ask the PC-OC Mod to consider the reports and make proposals for follow up.

### **8. Mutual Assistance in Criminal Matters**

#### **a. Presentation by the PC-OC Rapporteur on MLA on recent developments and forum discussions**

The PC-OC took note of the presentation by Mr Eugenio Selvaggi (Italy).

#### **b. Follow up to the project VC 2248 on effective tools to facilitate MLA: practical guidelines and model request forms**

The PC-OC considered the proposal by the PC-OC Mod for follow-up to the above-mentioned project, taking into account existing national and international guidelines and model request forms as compiled in document PC-OC Mod (2014)01 including the activities undertaken in this field by the Polish authorities within a project of the Eastern Partnership Judiciary Panel funded by the European Commission.

The Committee agreed that it would be useful to adopt a standard model request form and practical guidelines on MLA for the implementation of Council of Europe instruments in this field. It was therefore decided to ask the PC-OC Mod to develop such a standard model request form and practical guidelines on the basis of the work undertaken within the Project VC 2248 (Doc DG-HL(2010)6) and taking into account the existing model request forms and guidelines mentioned above.

#### **c. Ways to deal with the increase of MLA requests: development of guidelines for practitioners of requesting states on good practices of self-restraint**

At its previous meeting, the PC-OC considered the proposal by the PC-OC Mod to develop guidelines for practitioners of requesting states on good practices of self-restraint in order to avoid the submission of requests when this is possible. The Committee decided to instruct the PC-OC Mod to develop its proposal, taking into account the requirements of the Convention as well as the possibility for requesting states to consider the principle of proportionality.

The PC-OC considered the conclusions of the PC-OC Mod and agreed that the Convention does not foresee any grounds of refusal for so called “de minimis cases”, it also agreed that the overload could be alleviated by improving the case management system in requested states. It was decided to:

- ask the PC-OC Mod to address these issues in the general practical guidelines to facilitate MLA mentioned under item 8b.

#### **d. Liability of legal entities**

The PC-OC, referring to the discussion held during its last meeting on the basis of the paper presented by Mr Selvaggi [Doc PC-OC(2013)13], discussed the issue further and decided to:

- invite Mr Vladimir Zimin (Russian Federation) to prepare a discussion paper on mutual assistance in criminal, civil and administrative matters related to criminal offenses and the liability of legal persons and non-conviction based confiscation for the next meeting of the PC-OC Mod;
- invite the PC-OC Mod to consider the issues further and make proposals for follow up.

#### **e. Preparation of the special session on seizure and confiscation of proceeds of crime, including the management of confiscated goods and asset sharing**

The PC-OC noted that the CDPC would have to decide on a follow up to the White Paper on Transnational Organised Crime in which the issue of seizure and confiscation could play an important role. The PC-OC discussed various topics of interest for this special session, including in particular the non-conviction based confiscation and the burden of proof, the management of frozen or confiscated goods, the recovery and sharing of assets and decided to:

- inform the CDPC of these suggestions;
- ask the PC-OC Mod to prepare the special session in line with the decision taken by the CDPC as regards the follow up to the White Paper.

#### **f. Other issues**

The PC-OC also considered a question submitted by Mr Yitzchak Blum (Israel) concerning mutual assistance requests to carry out in-court charging procedures [PC-OC(2014)06]. The PC-OC agreed that such requests might be difficult to execute by some requested states due to differences in procedures. The PC-OC suggested that where these difficulties arise, requesting states could consider alternatives where possible, including for example the use of videoconferences.

### **9. Any other business**

The PC-OC heard information by Ms Ianina Lipara representing the European Judicial Network (EJN) concerning the development of the EJN website and the promotion of partnerships with other networks.

The PC-OC also heard information by Mr Gerhard Kreutzer, representing INTERPOL, about the progress made in the development of the e-extradition initiative.