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PC-OC(2024)05

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 85th meeting of the PC-OC
chaired by Adil Abilov (Azerbaijan)**

Hybrid Meeting held on 14-16 May 2024

1. Opening of the meeting and adoption of the agenda

After the opening of the meeting by the Chair, the agenda was adopted as reflected on the website.

2. Points for information

The Chair informed the Committee of the last meeting of the Judicial Cooperation Network for Central Asia and Southern Caucasus (CASC) during which information was provided on a project regarding the digitalisation of international co-operation processes in Uzbekistan, which could provide inspiration for the future work of the PC-OC. He also informed the PC-OC of his contacts with representatives of the United Arab Emirates, who expressed their willingness to participate in the next plenary meeting of the Committee in November. The PC-OC instructed the Secretariat to invite a representative from that country to the next PC-OC meeting.

The PC-OC took note of the information provided by Eva Pastrana, newly appointed Head of the Criminal Law Division and Secretary to the CDPC. Ms Pastrana notably informed the Committee about:

- the reinforcement of the Criminal Law Division in the light of the continued and increasing relevance of its work, notably for the follow-up to the 4th Summit of Heads of State and Government of the Council of Europe held in Reykjavik in May 2023;

- the opening of the Kyiv Office of the Register of Damage for Ukraine, as well as the continued involvement of the Council of Europe in the Core Group on the creation of a special tribunal on the crime of aggression against Ukraine;
- the adoption of the Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law and its imminent opening for signature;
- progress made on the text of a new global convention regarding the protection of the environment through criminal law;
- the adoption by the Committee of Ministers of a Recommendation on Hate Crime, jointly prepared by the CDPC and the Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI);
- ongoing work within the CDPC regarding the need for and feasibility of a new Council of Europe instrument regarding the smuggling of migrants.

The PC-OC warmly welcomed the information provided by the Chilean delegation regarding the decision of the Committee of Ministers to invite the Republic of Chile to accede to the European Convention on Extradition and the efforts put in place by Chile to ensure a speedy accession process.

The PC-OC was informed by the Secretariat on the signatures and ratifications of the conventions under its purview since its last plenary meeting. The PC-OC also took note of information provided by delegations on the latest bilateral treaties concluded or being negotiated regarding international co-operation in criminal matters and other developments of relevance for the work of the Committee.

3. European Convention on Mutual Assistance in Criminal Matters

a. Draft Third Additional Protocol

The PC-OC examined a draft Third Additional Protocol, indicating possible amendments to the Convention and its Second Additional Protocol, as examined and amended by the PC-OC Mod at its last meeting in March 2024. The provisions of this draft pertained to channels of communication, hearing by video conference, the use of technical recording devices in the territory of another Party, interception of telecommunications, time limits for the execution of MLA requests, costs and reservations.

The PC-OC amended the draft Additional Protocol and its draft Explanatory Report and instructed the Secretariat to disseminate the text as amended. It took note of a proposal by the Norwegian delegation to include provisions relating to the interception of telecommunications without the technical assistance of the requested Party. The PC-OC invited that delegation, as well as other delegations which during the meeting indicated they would propose concrete drafting proposals and amendments to the draft Additional Protocol, to send them to the Secretariat before 26 July 2024.

The PC-OC instructed the Secretariat to complete the draft Additional Protocol with final clauses, including regarding the effect of the Third Additional Protocol on the existing declarations under the Convention and its Additional Protocols, as well as the relationship between the Second and Third Additional Protocols, and to consult the Treaty Office of the Council of Europe on their compatibility with the Council of Europe treaty practice.

The PC-OC instructed the PC-OC Mod to finalise the draft Additional Protocol and its draft Explanatory Report at its next meeting in September 2024, with a view to allowing the PC-OC plenary to adopt them at its next meeting in November 2024 and to submit them to the CDPC.

b. Draft questionnaire on confidentiality

The PC-OC thanked the UK delegation for the preparation of a questionnaire on confidentiality in MLA proceedings, in co-operation with other delegations. With a view to increasing transparency and clarity on the practices of different States Parties regarding this matter, the PC-OC instructed the Secretariat to send it to all States Parties to the European Convention on Mutual Assistance in Criminal Matters and invited the latter to reply to this questionnaire by 26 July 2024. The PC-OC further instructed the PC-OC Mod to examine these replies at its next meeting and advise the PC-OC on the follow-up to be given to this issue.

c. Request by Thailand for an opinion on accession

In the light of the information provided by the Thai authorities that the Kingdom of Thailand intends to formally start procedures in order to request to be invited to accede to the European Convention on Mutual Assistance in Criminal Matters, the PC-OC examined a draft opinion on such an accession in accordance with its policy paper endorsed by the Committee of Ministers in March 2023. The PC-OC notably took into account relevant information compiled by the Secretariat, views and experiences provided by various delegations, as well as information provided by the Thai authorities. It also took note of answers provided by the delegation of Thailand to questions raised by its members.

The PC-OC adopted its opinion on this matter in line with its policy paper on accession and decided to transmit it to the CDPC for consideration. It invited the CDPC to authorise the Secretariat to transmit this opinion to the Committee of Ministers when the Kingdom of Thailand formally requests to be invited to accede to the European Convention on Mutual Assistance in Criminal Matters.

d. Exchange with a delegation from Kazakhstan

The PC-OC took note of a presentation made by a delegation from Kazakhstan headed by Mr Baurzhan Kurmanov, Official Representative of the General Prosecutor's Office of the Republic of Kazakhstan, which was followed by an exchange with that delegation. Taking note of the intention expressed by the Kazakh authorities to formally start procedures in order to request to be invited to accede to the European Convention on Mutual Assistance in Criminal Matters, the PC-OC decided to set in motion the procedure laid out in its relevant Policy Paper with a view to adopting its opinion on such a request at its next plenary meeting in November 2024.

e. Exchange of experiences on MLA proceedings (including with non-European states)

The PC-OC held an exchange of experiences regarding MLA proceedings, on the basis of concrete cases and practical difficulties encountered by delegations. In this connection, the PC-OC took note with interest of the information provided by one delegation regarding the potential interest of two African countries to accede to the European Convention on Mutual Assistance in Criminal Matters alongside South Africa which has already been invited to accede to this convention and considered that the authorities of those countries could get in touch with the PC-OC Secretariat. The PC-OC also took note of the information provided by the UK delegation that the online submission form for MLA and extradition requests set up by the UK is now operational and their invitation to other delegations to contact the UK Central Authority for further information if needed.

4. European Convention on Extradition

a. Exchange of experiences on extradition proceedings (including with non-European States)

The PC-OC had an exchange of experiences regarding extradition proceedings, on the basis of concrete cases and practical difficulties encountered by delegations, focussing notably on the interpretation of the Petruhhin judgment, and the interplay of extradition and MLA procedures based on an example where evidence provided by videoconference by a suspect while they were remanded in custody created complications for the extradition proceedings. The PC-OC also took note of the successful extradition of a person suspected of having committed a number of serious crimes, which involved several States Parties and various MLA requests.

The PC-OC also took note of information provided by the Ukrainian delegation that a dedicated special penitentiary facility compliant with European standards, for use in extradition cases, has become operational, which has facilitated the resumption of co-operation with one State Party to the European Convention on Extradition. The Ukrainian delegation reiterated the willingness of the Ukrainian authorities to provide information and assurances in extradition cases, and expressed its gratitude to States Parties which maintained their co-operation with Ukraine over the past years.

b. Update of the publication “Extradition: European standards”

The PC-OC took note of information provided by the Secretariat on the progress made regarding this project, and notably the fact that the expert entrusted with this work is expected to submit a draft soon.

5. Supervision of conditionally sentenced or conditionally released offenders

The PC-OC took note of the replies sent by delegations to questions contained in a discussion paper prepared by Mariana Radu (Romania). It invited delegations who have not replied yet to do so by 26 July and instructed the PC-OC Mod to continue the examination of this matter.

6. Exchange of experiences on proceedings regarding the transfer of sentenced persons (including with non-European states)

The PC-OC had an exchange of experiences regarding transfer proceedings, on the basis of concrete cases and practical difficulties encountered by delegations, focussing notably on cases with a particular non-State Party to the Convention on the Transfer of Sentenced Persons.

This exchange revealed a number of issues, such as the treatment of prisoners with mental health problems or the impact of civil liability issues in transfer cases, for which the PC-OC considered that a better sharing of experiences would be beneficial. The PC-OC decided to elaborate a questionnaire for this purpose and decided to invite all delegations to send proposals for questions to be included in this questionnaire to the Secretariat by 26 July 2024. It instructed the Secretariat to compile these questions into a draft questionnaire. It further instructed the PC-OC Mod to examine this draft questionnaire, to amend it as necessary and submit it to the PC-OC plenary.

7. Future workplan of the PC-OC, including on transfer of criminal proceedings

The PC-OC took note of the proposals made by the PC-OC Mod at its last meeting on 5-7 March 2024 regarding the possible future workplan of the PC-OC, bearing in mind the terms of reference of the Committee for the period 2024-2027. The PC-OC welcomed and endorsed these proposals, while complementing them with an additional task in the light of the preceding agenda item regarding transfer of sentenced persons.

As a result, the PC-OC agreed on its future workplan as follows:

- to hold a special session on the transfer of proceedings in criminal matters, to be held in 2025. The PC-OC invited delegations to help the Secretariat in identifying an expert for assistance in the preparation of this special session;
- to develop the future work of the PC-OC on confidentiality in MLA proceedings into a practical guidance for practitioners, to be considered in the broader context of a number of issues in order to facilitate better co-operation, including between civil and common law systems;
- to consider a follow-up to its previous work regarding the review of reservations and declarations to the Council of Europe conventions on international co-operation in criminal matters;
- to develop practical guidance relating to the use of electronic signature. It decided to launch this exercise with a tour de table to be held at one of its future meetings;
- to consider the role of the Council of Europe conventions in the context of international co-operation relating to core international crimes, and the articulation between these conventions and the Ljubljana-the Hague Convention. The PC-OC considered that it could set up a restricted working group on this question at one of its future meetings;
- to set a timeline for a co-ordinated review and update of country information available on the PC-OC's website;
- in addition to its continuous work on its case-law compendium, to consider the development of short thematic practical factsheet(s) on the case-law of the European Court of Human Rights relating to international co-operation;
- to develop practical tools in the light of the outcome of the questionnaire relating to the transfer of sentenced persons.

The PC-OC further considered that it would be expedient to compile all conventions under its purview and their explanatory reports in a single pdf document and to make this document available on the website of the PC-OC.

Taking note of the importance of statistics, such as the number of incoming and outgoing requests, as concrete indicators of the continued relevance of the conventions under its purview and the PC-OC's work, the PC-OC invited all delegations to send to the Secretariat any such information if readily available. In this respect, the PC-OC reaffirmed that, as its discussions on practical experiences and sharing of practices reveal, in particular the conventions on extradition, mutual assistance and transfer of sentenced persons are used on a daily basis between the States Parties.

8. Possible promotion by the EU of conventions vis-à-vis third countries

The PC-OC took note that the European Union is currently considering the possible promotion by the EU vis-à-vis third countries of several Council of Europe conventions, including potentially some conventions under the PC-OC's purview. It welcomed this initiative, as well as the fact that the PC-OC's role and the procedure set out in its policy paper have already been acknowledged during these discussions.

For the success of this exercise and in the light of this policy paper endorsed by the Committee of Ministers of the Council of Europe, the PC-OC considered that it would be expedient for the PC-OC to be involved in the identification of potential target countries. It further considered that such promotion should be aimed at encouraging third countries to first take up contact with the PC-OC, with a view to benefiting from the detailed procedure that the PC-OC put in place on the basis of that policy paper and which the Committee has already successfully put in practice in concrete cases.

The PC-OC instructed the Secretariat to relay its views on this question to its EU counterparts at future co-ordination meetings. It also welcomed the willingness expressed by its delegations from States currently holding the Presidency of the Council of the European Union or who will do so in the near future, to bring them to the attention of their competent colleagues. The PC-OC called on all its delegations to promote the procedure established by the PC-OC's policy paper internationally where appropriate.

9. Dates of future meetings

The PC-OC decided to maintain the dates of its next plenary meeting as 12-14 November. Considering the short time between this meeting and the plenary meeting of the CDPC, the PC-OC invited its delegations to be particularly attentive to keeping the heads of delegation of the CDPC informed regarding the PC-OC's work on the draft Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

10. Any other business

The PC-OC appointed Ana Gvinjilia (Georgia) as its gender equality rapporteur.