

Strasbourg, 20 October 2009
cdpc plenary/docs 2009/cdpc (2009) 13 - e



CDPC (2009) 13

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

LIST OF DECISIONS OF THE 58TH PLENARY SESSION

(33rd meeting as a Steering Committee)

(Strasbourg, 12-16 October 2009)

CDPC website: www.coe.int/cdpc
CDPC e-mail: dgi.cdpc@coe.int

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The following abbreviations are used in referring to Committees

CAHVIO	AD HOC COMMITTEE ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE
CDAP	CONFERENCE OF DIRECTORS OF PRISON ADMINISTRATION
CDPC	EUROPEAN COMMITTEE ON CRIME PROBLEMS
CJ-S-CH	GROUP OF SPECIALISTS ON CHILD-FRIENDLY JUSTICE
PC-CP	COUNCIL FOR PENOLOGICAL CO-OPERATION
PC-OC	COMMITTEE OF EXPERTS ON THE OPERATION OF EUROPEAN CONVENTIONS IN THE PENAL FIELD
PC-PM	COUNCIL FOR POLICE MATTERS
T-CY	CYBERCRIME CONVENTION COMMITTEE

BRIEF FOREWORD

1. The European Committee on Crime Problems (CDPC) met in Strasbourg from 12 to 16 October 2009. The list of participants and the agenda appear in Appendices I and II respectively.

ITEMS SUBMITTED TO THE COMMITTEE OF MINISTERS FOR DECISION

2. The CDPC invited the Committee of Ministers:
 - a. to adopt the draft Third Additional Protocol to the European Convention on Extradition and to take note of its Explanatory Report (see item 3 of the agenda; for the texts of the draft Protocol and the Explanatory Report, see Addenda I and II to this report);
 - b. to adopt the draft Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health and to take note of its Explanatory Report (see item 4 of the agenda and Addenda III and IV to this report);

the CDPC noted that the text of Chapter VIII of the draft Convention contained no reference to the financing of the monitoring mechanism, and invited the Committee of Ministers to take a decision on whether the Council of Europe should bear the costs of monitoring the implementation of the Convention or whether States Parties should finance the activities of the Committee of the Parties, and whether this should be stated in the text of the Convention;

the CDPC noted that the delegation of the Russian Federation proposed to re-word Article 29 of the draft Convention in order to make the procedure for accession of non-Member States of the Council of Europe to the Convention easier and better reflect the aim of the Convention as a global instrument, and invited the Committee of Ministers to decide on the wording of this article (see Appendix III to this report);

with regard to the provisions of the draft Convention which specifically mention the CDPC (Articles 24, 25, 27, 32), Mr Jan Kleijssen, Director of Standard-Setting, drew the attention of the CDPC to the fact that the terms of reference of Council of Europe committees are renewable annually and that the Committee of Ministers has in the past changed the names of its subordinate committees. As a result, he pointed out that it might be more appropriate to refer in the draft Convention to “an appropriate Council of Europe committee in criminal matters” instead of making explicit reference to the CDPC. The Jurisconsult had been requested for an opinion on the issue. The CDPC felt that as it was mentioned in many other Council of Europe conventions in the criminal field, this practice should continue. The text of the draft Convention, therefore, for the time being, continues to contain references to the CDPC. It will then be up to the Committee of Ministers to decide on the proposal to replace the references to the CDPC with less specific references to the appropriate subordinate bodies of the Committee of Ministers. Directorate of Legal Advice and Public International Law has since provided a legal opinion on that issue (see Appendix XIV);

- c. to adopt the draft Recommendation on the Council of Europe Probation Rules and to take note of its Commentary (see item 5 of the agenda and Addenda V and VI to this report).

ITEMS SUBMITTED TO THE COMMITTEE OF MINISTERS FOR INFORMATION

3. The CDPC invited the Committee of Ministers to note:
 - a. that the CDPC approved the revised draft terms of reference of the CJ-S-CH (see item 13d of the agenda and Appendix IV to this report);
 - b. that the CDPC instructed its Bureau to examine the functioning of the monitoring mechanisms in the Council of Europe conventions under the authority of the CDPC;

- c. that the CDPC approved the current and future priorities and activities of the PC-CP, and that the CDPC considered the work related to foreign nationals in prisons to be a future priority in penitentiary issues (see item 6a of the agenda and Appendix V to this report);
- d. the conclusions of the 15th CDAP held on 9-11 September in Edinburgh and that the CDPC instructed the PC-CP to ensure an effective follow-up (see item 6a of the agenda and Appendix VI to this report);
- e. that the CDPC approved the PC-CP's proposal to extend its planned work to look also at issues related to the prevention of re-offending and the treatment of dangerous offenders in the light of Resolution No. 1 adopted at the 29th Council of Europe Conference of Ministers of Justice (Norway, June 2009) (see item 6b of the agenda);
- f. the fact that specific issues relating to the application of the rules on jurisdiction, notably the problem of the application of the double criminality, arise frequently when preparing criminal law conventions and that the CDPC instructed the PC-OC to look into the effects of jurisdiction in relation to international cooperation in criminal matters (see item 7a of the agenda);
- g. that the CDPC instructed the Secretariat to look at the conventions and other relevant documents in order to examine the possibility of drafting standard model provisions on certain issues such as jurisdiction, sanctions, liability of legal persons, to be used in future Council of Europe legal instruments in the criminal field and report to the Bureau on the results of this work at one of its future meetings ;
- h. the results of the PC-OC's stock-taking exercise on the issue of compensation in extradition procedures and that the CDPC instructed the Secretariat to prepare a report on issues relating to compensation based on the replies to its questionnaire and to put this on the Council of Europe's website and distribute it to practitioners (see item 7b of the agenda);
- i. as regards Resolution No. 1 on access to justice for migrants and asylum seekers adopted by the Ministers of Justice in Lanzarote in October 2007, the summary of Member States' replies to its questionnaire on the subject, and that the CDPC instructed the Secretariat to prepare a report promoting this important work which, with the exception of the last question of the questionnaire on future work in the field, should be published on the website (see item 7c of the agenda and Appendix VII to this report);
- j. that the CDPC considered the question of the relationship between asylum procedures and extradition procedures to be of great importance to the Council of Europe and that it noted the absence of a specialised intergovernmental committee dealing with issues related to asylum seekers (see item 7c of the agenda);
- k. that the Council of Europe has initiated a project to develop effective practical tools to facilitate judicial cooperation in criminal matters, involving the creation of model request forms to be used in connection with the conventions of the Council of Europe on international cooperation in the criminal law field. The aim of the project is to define a general framework for such forms, which will then be individualised by each state party according to its domestic requirements. The forms will be made available to practitioners through a database set up on the Council of Europe's website (see item 7d of the agenda and Appendix VIII to this report);
- l. that the preparatory stages of the above-mentioned project are being funded by a voluntary contribution from Germany and that further voluntary contributions from Member States are required for the project to continue in 2010;
- m. that the CDPC had a discussion on scientific proof in criminal matters and instructed its Bureau to look further into the issues highlighted in the report prepared by the Secretariat, in particular the question of ethical norms, equality of arms, admissibility of evidence and fundamental rights in relation to scientific proof, with a view to a feasibility study for possible future work in this area (see item 8 of the agenda and Appendix IX to this report);

- n. as regards the 29th Council of Europe Conference of Ministers of Justice (Tromsø, Norway, June 2009), that the CDPC instructed the Secretariat to engage an expert to carry out a preliminary report/study on the subject of victims as a follow-up to Resolution No. 1 (see item 10a of the agenda and Appendix X to this report);
 - o. that the CDPC instructed the PC-OC to examine Resolution No. 2 on mutual legal assistance in criminal matters (see item 10a of the agenda and Appendix XI to this report);
 - p. that the CDPC had a preliminary discussion on the possible themes of the 30th Council of Europe Conference of Ministers of Justice, which will be held in Istanbul in 2011, and invited delegations to send proposals for possible themes to the Secretariat in writing (see item 10b of the agenda);
 - q. the CDPC's opinion on Parliamentary Assembly Recommendation 1881 (2009) on the urgent need to combat so-called "honour crimes" (see item 13c of the agenda and Appendix XIII to this report);
 - r. that the CDPC held a discussion on the possibility of setting up a committee dealing with police questions, following its decision at the 2007 plenary to "freeze" the work of the PC-PM, due to the difficult staff and budgetary situation, until 2009, invited delegations to send written proposals to the Secretariat by 2 November 2009 for topics which could be dealt with by such a committee and instructed its Bureau to examine the issue further on the basis of the proposals (see item 13a of the agenda).
4. The CDPC took note of:
- a. the presentation of the SPACE I and II surveys and expressed its gratitude for these very important and useful statistics not only for policy makers but also for judges and prosecutors (see item 6c of the agenda);
 - b. the information provided by the Secretary of CAHVIO on the progress made by the group in its work and of the decision of the Committee of Ministers concerning its future work (see item 9 of the agenda);
 - c. the three resolutions adopted by the Ministers at the 29th Council of Europe Conference of Ministers of Justice in Tromsø, Norway, on preventing and responding to domestic violence, on mutual legal assistance in criminal matters and on Council of Europe action to promote the rule of law (see item 10a of the agenda and Appendices X, XI and XII to this report);
 - d. the 50th anniversary of the European Convention on Mutual Legal Assistance in Criminal Matters and welcomed its ratification by all Member States and by Israel (see item 10a of the agenda);
 - e. the draft questionnaire of the T-CY on transborder access to data (see item 11 of the agenda);
 - f. the fact that the Secretariat will invite the CDPC delegations to send possible proposals for editorial amendments to the adopted draft Recommendation on the Council of Europe Probation Rules and to its Commentary respectively by 23 October and 4 November.
5. The CDPC elected Mr Hans-Holger Herrfeld (Germany) as Chair of the CDPC, Mr Roland Miklau (Austria) as Vice-Chair, and Mr Vincent Jamin (France), Mr Tihomir Kralj (Croatia), Ms Helena Lisuchova (Czech Republic), Mr Ilya Rogachev (Russia) and Mr Lorenzo Salazar (Italy) as members of the CDPC Bureau (see item 12 of the agenda).
6. The CDPC decided to hold its next meeting in June 2010.
7. The CDPC invited the Committee of Ministers to take note of this report as a whole.

APPENDICES

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APPENDIX XIV	Request for legal opinion concerning reference to Steering Committees of other subordinate bodies in Council of Europe Conventions

APPENDIX I



Strasbourg, 20 October 2009
[CDPC plenary/2009 plenary/oj lp/cdpc list of participants]

CDPC (2009) LP FINAL (Bil)

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMITE EUROPEEN POUR LES PROBLEMES CRIMINELS
(CDPC)

58th Plenary Session / 58^{ème} Session plénière

Strasbourg, 12–16 October / 12-16 octobre 2009

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

Strasbourg
Council of Europe / Conseil de l'Europe
Agora Building / Bâtiment Agora
Room G.02 / Salle G02

MEMBER STATES / ETATS MEMBRES

ALBANIA / ALBANIE

**No nomination / Pas de nomination

ANDORRA / ANDORRE

**No nomination / Pas de nomination

ARMENIA / ARMÉNIE

- * Mr Hovhannes POGHOSYAN, Head of the International Co-operation Division, Police Headquarters, YEREVAN

AUSTRIA / AUTRICHE

- * Mr Wolfgang BOGENSBERGER, Director General, Directorate for Penal Legislation, Federal Ministry of Justice, VIENNA

Mr Roland MIKLAU, Head of Mission, European Assistance Mission to the Albanian Justice System (EURALIUS), TIRANA

Mr Fritz ZEDER

Head of Unit II.2 in the Federal Ministry of Justice, Ministry of Justice, VIENNA

AZERBAIJAN / AZERBAÏDJAN

- * Ms Saadat YUSIFOVA, Senior Adviser, Division of the work with law enforcement bodies, Executive Office of the President, BAKU

BELGIUM / BELGIQUE

Mr Jean-Yves MINE, Head (General Director) of the Department of Legislation, Belgian Ministry of Justice, BRUXELLES

- * Ms Tine DE MEULENAER, Attaché-Jurist, Department of Legislation, Belgian Ministry of Justice, BRUXELLES

Ms Mathilde VAN DER STEGEN DE SCHRIECK, Attaché of the Department Criminal Policy, Belgian Ministry of Justice, BRUXELLES

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

- * Mr Damir VEJO, Chef du Service pour le crime organisé et la corruption, Ministère de la Sécurité de la Bosnie-Herzégovine, SARAJEVO

BULGARIA / BULGARIE

Apologised/Excusé

CROATIA / CROATIE

- * Mr Tihomir KRALJ, Head of Drug Department, Criminal Police Directorate, Police National Office for Suppression of Corruption and Organised Crime, ZAGREB

CYPRUS / CHYPRE

- * Ms Androula BOULARAN, Criminological Research Officer, Ministry of Justice and Public Order, NICOSIA

CZECH REPUBLIC / RÉPUBLIQUE TCHÈQUE

- * Ms Helena LISUCHOVA, Legal Expert, Department of International Organizations and Cooperation, Ministry of Justice, PRAGUE 2

DENMARK / DANEMARK

Ms Annette ESDORF, Deputy Director-general, Department of Prisons and Probation, Ministry of Justice, COPENHAGEN K

- * Mr Jesper HJORTENBERG, Deputy Director of Public Prosecution, Office of the Director of Public Prosecution, COPENHAGEN K

Ms Mette KREIBORG, Head of Section, Ministry of Justice, COPENHAGEN K

ESTONIA / ESTONIE

Ms Kristiina AAVIK, Counsellor, Ministry of Justice, TALLINN

FINLAND / FINLANDE

Mr Hannu TAIMISTO, Ministerial Counsellor, Ministry of Justice, HELSINKI

FRANCE

- * M. Vincent JAMIN, Chargé de mission pour la négociation et la transposition des normes pénales internationales à la Direction des Affaires criminelles et des Grâces du Ministère de la Justice, PARIS

Mme Josyane CLERICI, Direction de l'Administration pénitentiaire, PARIS

GEORGIA / GÉORGIE

Apologised/Excusé

GERMANY / ALLEMAGNE

- * Mr Hans-Holger HERRNFELD, Regierungsdirektor, Head of International Criminal Law and European and Multilateral Criminal Law Cooperation Division, Ministère de la Justice, Division II B 6, BERLIN

GREECE / GRÈCE

Mr Georgios VOULGARIS, Procureur at the Athens Court of First Instance, ATHENS

HUNGARY / HONGRIE

- * Mme Klara NÉMETH-BOKOR, Directrice Générale Adjointe du Département, Ministère de la Justice et de la Police, BUDAPEST

ICELAND / ISLANDE

Apologised/Excusé

IRELAND / IRLANDE

Mr Hugo BONAR, Enforcement Manager, Irish Medicines Board, Earlford Center, Earlsford Terrace, DUBLIN 2

Mr Anthony McGRATH, Principal Officer, International Policy Division, Department of Justice, Equality and Law Reform, DUBLIN 2

- * Ms Joyce DUFFY, Principal Officer, International Policy Division, Department of Justice, Equality and Law Reform, DUBLIN 2

ITALY / ITALIE

M. Francesco Mauro IACOVIELLO, Substitut du Procureur Général auprès de la Cour de Cassation, ROMA

M. Nicola LETTIERI, Attaché juridique, Co-agent adjoint du gouvernement devant le CEDH, STRASBOURG

- * Mr Lorenzo SALAZAR, Directeur du Bureau des questions législatives, internationales et des grâces, Direction Générale de la Justice pénale, Ministère de la Justice, ROMA

LATVIA / LETTONIE

- * Ms Inga MELNACE, Deputy Head, Criminal Law Department, Ministry of Justice, RIGA

LIECHTENSTEIN

- * Mr Carlo RANZONI, Judge, Fürstliches Landgericht, VADUZ

LITHUANIA / LITUANIE

Ms Vygantė MILASIUTE, Head of International Treaties Law Division, Ministry of Justice of the Republic of Lithuania, International Law Department, VILNIUS

LUXEMBOURG

Mr Jeannot NIES, 1er Avocat Général au Parquet Général, Parquet Général du GD de Luxembourg, LUXEMBOURG

MALTA / MALTE

Mr Maurizio CORDINA, LL.D, Prosecution Unit, Office of the Attorney General, St George's Square, The Palace of the President, VALETTA

MOLDOVA

- * Mme Rodica SECRIERU, Conseiller, Ministère de la Justice, CHISINAU

MONACO

Mme Antonella SAMPO-COUMA, Administrateur Principal, Direction des Services Judiciaires, Palais de Justice, MONACO

Mme Marina CEYSSAC, Conseiller auprès du Directeur des Services Judiciaires, Direction des Services Judiciaires, MONACO

MONTENEGRO

Mr Vuksan VUKSANOVIC, Advisor, Ministry of Justice of Montenegro, PODGORICA

Mr Luka ANDJELIC, Ministry of Justice of Montenegro, PODGORICA

NETHERLANDS / PAYS-BAS

M. Gérard C. DE BOER, Conseiller juridique, adjoint au Représentant Permanent, Représentation Permanente des Pays-Bas auprès du Conseil de l'Europe, STRASBOURG

Mr Bart WIJNBERG, Advisor, Ministry of Health, Welfare and Sport, The Netherlands, Department of Pharmaceutical Affairs & Medical Technology, THE HAGUE

NORWAY / NORVÈGE

- * Ms Linda Katharina DRAZDIK, Senior Adviser, Section for European and International Affairs, Ministry of Justice and the Police, OSLO

Ms Hanne Charlotte SCHEFFER, Jurist, Norwegian Medicines Agency, OSLO

POLAND / POLOGNE

Mr Sławomir BUCZMA, Judge, Judicial Assistance and European Law Department, Ministry of Justice, WARSAW

PORTUGAL

Mr Antonio DELICADO, Head of Unit for Criminal Justice, Ministry of Justice, Directorate General for Justice Policy, International Relations Department, LISBOA

ROMANIA / ROUMANIE

Ms Mariana ZAINEA, Head of Division for International judicial cooperation in criminal matters, Directorate for International Law and Treaties, Ministry of Justice and Citizens Liberties of Romania, Directorate for International Law and Treaties, BUCAREST

RUSSIAN FEDERATION / FÉDÉRATION DE RUSSIE

Mr Serguey DALECHIN, Deputy to the Permanent Representative, STRASBOURG

Mr Sergei GLAGOLEV, Deputy Head of Division, Directorate of organisation of state supervision over circulation of medicinal products, MOSCOW

Mr Konstantin KOSORUKOV, Deputy to the Permanent Representative, STRASBOURG

Mr Sergei OVERCHENKO, Head of Division, Secretariat of the Inter-Agency Commission on the Council of Europe affairs, Ministry of Foreign Affairs of the Russian Federation, MOSCOW

- * Mr Ilya ROGACHEV, Director of Department of New Challenges and Threats, Ministry of Foreign Affairs of the Russian Federation (Head of delegation), Directorate of New Challenges and Threats, MOSCOW

Ms Irina SILKINA, Second Secretary, Department of New Challenges and Threats, Ministry of Foreign Affairs of the Russian Federation, MOSCOW

Ms Tatiana SUTYAGINA, a.i. Head of Treaty Division of the International Law Directorate of the General Directorate on international legal cooperation, Prosecutor General's Office of the Russian Federation, Main Department International Legal Co-operation, MOSCOW

SAN MARINO / SAINT-MARIN

**No nomination / Pas de nomination

SERBIA / SERBIE

Ms Zorana KATIĆ, Legal advisor in the Bureau for international cooperation and EU integration in the Ministry of Interior of the Republic of Serbia, BELGRADE

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Mr Branislav BOHÁČIK,

Chairman of the CDPC / Président du CDPC

Candidate for Prosecutor, District Prosecutor's Office, District Prosecutor's Office, BRATISLAVA

- * Mr Richard SVIEZENY, Senior state advisor, Ministry of Justice, Division for Judicial Cooperation in Criminal Matters, BRATISLAVA

SLOVENIA / SLOVÉNIE

**No nomination / Pas de nomination

SPAIN / ESPAGNE

M. José Luis CHOZAS GONZALEZ, Chef de Service, Sous-direction Générale pour les Affaires de Justice dans l'Union Européenne et les Organisations Internationales, MADRID

SWEDEN / SUÈDE

- * Mr Per LENNERBRANT, Senior Legal Adviser, Ministry of Justice, Division for Criminal Law, STOCKHOLM

Mr Olof NYMAN, Legal Adviser, Ministry of Justice, Division for Criminal Law, STOCKHOLM

SWITZERLAND / SUISSE

Mme Anita MARFURT, Juriste, Unité Droit pénal international, Office Fédéral de la Justice, Département Fédéral de Justice et Police, BERNE

M. Matthias STACCHETTI, Avocat, Chef de la division pénale, Swissmedic Institut suisse des produits thérapeutiques, BERNE

- * M. Bernardo STADELMANN, Vice-directeur, Domaine de direction Droit pénal, Office Fédéral de la Justice, Département Fédéral de Justice et Police, BERNE

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” / “L’EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE”

- * M. Nikola MATOVSKI, Professeur, Faculté de Droit de l'Université « S-TS Cyrille et Méthode », SKOPJE

TURKEY / TURQUIE

Mr Ahmet FIRAT, General Director, Ministry of Justice, General Directorate, International Law and Foreign Relations, ANKARA

UKRAINE

Ms Kateryna SHEVCHENKO, Head of the Private International Law and International Legal Assistance Department, Ministry of Justice of Ukraine, KYIV

UNITED KINGDOM / ROYAUME-UNI

Ms Harjit ATHWAL, Head of European Criminal Justice and Rights, International Directorate, Ministry of Justice, LONDON

Mr Alistair CLYDE, Data Sharing & Criminal Justice Team, International Directorate, Home Office, LONDON

Ms Lynda SCAMMELL, Enforcement Policy Advisor, Medicines and Healthcare products Regulatory Agency Room LONDON

* * * *

CDPC BUREAU / BUREAU DU CDPC
(CDPC-BU)

AUSTRIA / AUTRICHE

Mr Roland MIKLAU, Head of Mission, European Assistance Mission to the Albanian Justice System (EURALIUS), TIRANA

DENMARK / DANEMARK

Mr Jesper HJORTENBERG, Deputy Director of Public Prosecution, Office of the Director of Public Prosecution, COPENHAGEN K

GERMANY / ALLEMAGNE

Mr Hans-Holger HERRNFELD, Regierungsdirektor, Head of International Criminal Law and European and Multilateral Criminal Law Cooperation Division, Bundesministerium der Justiz, Division II B 6, BERLIN

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Mr Branislav BOHÁČIK **Chair of the CDPC / Président du CDPC**
Director – Division for Judicial Co-operation in Criminal Matters, Ministry of Justice, BRATISLAVA

* * * * *

COMMITTEE OF EXPERTS ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS / COMITE D'EXPERTS
SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPEENNES DANS LE DOMAINE PENAL
(PC-OC)

Mr Erik VERBERT **Chair of the PC-OC / Président du PC-OC**
Deputy Legal Advisor, Ministry of Justice, Central Authority, BRUSSELS

COUNCIL FOR PENOLOGICAL CO-OPERATION /
CONSEIL DE COOPERATION PENOLOGIQUE
(PC-CP)

Mr Marcelo F. AEBI, Vice-directeur, Université de Lausanne, École des sciences criminelles, LAUSANNE

Ms Sonja SNACKEN **Chair of the PC-CP / Présidente du PC-CP**
Professor, Department of Criminology, Faculty of Law, BRUSSELS

GROUP OF SPECIALISTS ON COUNTERFEIT PHARMACEUTICAL PRODUCTS
GROUPE DE SPECIALISTES SUR LES PRODUITS PHARMACEUTIQUES CONTREFAITS
(PC-ISP)

Mr Fritz ZEDER **Chair of the PC-ISP / Président du PC-ISP**
Head of Unit II.2 in the Federal Ministry of Justice, Ministry of Justice, WIEN

CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS /
CONSEIL CONSULTATIF DE PROCUREURS EUROPEENS
(CCPE)

**No nomination / Pas de nomination

EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE /
COMMISSION EUROPEENNE POUR L'EFFICACITE DE LA JUSTICE
(CEPEJ)

**No nomination / Pas de nomination

STEERING COMMITTEE FOR HUMAN RIGHTS /
COMITE DIRECTEUR POUR LES DROITS DE L'HOMME
(CDDH)

**No nomination / Pas de nomination

PARLIAMENTARY ASSEMBLY - ASSEMBLÉE PARLEMENTAIRE

**No nomination / Pas de nomination

COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS /
COMMISSION DES QUESTIONS JURIDIQUES ET DES DROITS DE L'HOMME

**No nomination / Pas de nomination

COMMITTEE ON EQUAL OPPORTUNITIES FOR WOMEN AND MEN /
COMMISSION SUR L'EGALITE DES CHANCES POUR LES FEMMES ET LES HOMMES

**No nomination / Pas de nomination

CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE /
CONGRÈS DES POUVOIRS LOCAUX ET RÉGIONAUX DU CONSEIL DE L'EUROPE

**No nomination / Pas de nomination

COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS / COMMISSAIRE AUX DROITS DE L'HOMME DU CONSEIL DE L'EUROPE

**No nomination / Pas de nomination

CONFERENCE OF INGOS OF THE COUNCIL OF EUROPE / CONFERENCE DES OING DU CONSEIL DE L'EUROPE

**No nomination / Pas de nomination

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EUROPEAN COMMUNITY / COMMUNAUTÉ EUROPÉENNE

EUROPEAN COMMISSION / COMMISSION EUROPEENNE

Mr Anders AAGAARD, European Commission, DG JLS - Justice, Freedom and Security, Dir. E: Justice, Unit E.3: Criminal Justice, Office: MO59 03/96, BRUSSELS

Mr Christian TOURNIE, National Seconded Expert, DG JLS - Justice, Freedom and Security, Organised Crime Unit, BRUSSELS

COUNCIL OF THE EUROPEAN UNION / CONSEIL DE L'UNION EUROPÉENNE

**No nomination / Pas de nomination

* * * * *

**OBSERVERS WITH THE COUNCIL OF EUROPE /
OBSERVATEURS AUPRES DU CONSEIL DE L'EUROPE**

HOLY SEE / SAINT-SIÈGE

M. Thierry RAMBAUD, Professeur des Universités, STRASBOURG

UNITED STATES OF AMERICA / ÉTATS-UNIS D'AMÉRIQUE

**No nomination / Pas de nomination

CANADA

**No nomination / Pas de nomination

JAPAN / JAPON

Mr Hiroyuki MINAMI, Consul (Attorney), Consulate General of Japan in Strasbourg, STRASBOURG

MEXICO / MEXIQUE

**No nomination / Pas de nomination

* * * * *

OTHER PARTICIPANTS / AUTRE PARTICIPANTS

ISRAEL / ISRAËL

Mr Mickey ARIELI, Director, Pharmaceutical Crime Unit, Ministry of Health, JERUSALEM

* * * * *

**INTERNATIONAL INTERGOVERNMENTAL ORGANISATIONS /
ORGANISATIONS INTERNATIONALES INTERGOUVERNEMENTALES**

**UNITED NATIONS ASIA AND FAR EAST INSTITUTE FOR THE PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS / INSTITUT POUR LA PREVENTION DU CRIME ET LE TRAITEMENT DES
DELINQUANTS EN ASIE ET EN EXTREME-ORIENT DES NATIONS UNIES (UNAFEI)**

**No nomination / Pas de nomination

apologised/excusé

**UNITED NATIONS INTERREGIONAL CRIME AND JUSTICE RESEARCH INSTITUTE / INSTITUT
INTERREGIONAL DE RECHERCHE DES NATIONS UNIES SUR LA CRIMINALITE ET LA JUSTICE (UNICRI)**

**No nomination / Pas de nomination

**UNITED NATIONS LATIN AMERICAN INSTITUTE FOR THE PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS / INSTITUT LATINO-AMERICAIN POUR LA PREVENTION DU CRIME ET LE
TRAITEMENT DES DELINQUANTS (ILANUD)**

**No nomination / Pas de nomination

**UNITED NATIONS OFFICE ON DRUGS AND CRIME / OFFICE CONTRE LA DROGUE ET LE CRIME DES
NATIONS UNIES (UNODC)**

**No nomination / Pas de nomination

I.C.P.O. INTERPOL

**No nomination / Pas de nomination

**INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS /
ORGANISATIONS INTERNATIONALES NON-GOUVERNEMENTALES**

**EUROPEAN INSTITUTE FOR CRIME PREVENTION AND CONTROL / INSTITUT EUROPEEN POUR LA
PREVENTION DU CRIME ET LA LUTTE CONTRE LA DELINQUANCE (HEUNI)**

**No nomination / Pas de nomination

**INTERNATIONAL ASSOCIATION OF PENAL LAW (IAPL) / ASSOCIATION INTERNATIONALE DE DROIT
PÉNAL (AIDP)**

**No nomination / Pas de nomination

INTERNATIONAL CENTRE OF SOCIOLOGICAL PENAL AND PENITENTIARY RESEARCH AND STUDIES (INTERCENTER) / CENTRE INTERNATIONAL DE RECHERCHES ET D'ÉTUDES SOCIOLOGIQUES, PÉNALES ET PÉNITENTIAIRES (INTERCENTER)

Mr Giacomo BARLETTA CALDARERA, Conseiller Délégué aux Sections Scientifiques, INTERCENTER, CATANIA

INTERNATIONAL PENAL AND PENITENTIARY FOUNDATION (IPPF) / FONDATION INTERNATIONALE PÉNALE ET PÉNITENTIAIRE (FIPP)

**No nomination / Pas de nomination

INTERNATIONAL SOCIETY FOR CRIMINOLOGY (ISC) / SOCIÉTÉ INTERNATIONALE DE CRIMINOLOGIE (SIC)

**No nomination / Pas de nomination

INTERNATIONAL SOCIETY OF SOCIAL DEFENCE (ISSD) / SOCIÉTÉ INTERNATIONALE DE DÉFENSE SOCIALE (SIDS)

**No nomination / Pas de nomination

PERMANENT EUROPEAN CONFERENCE ON PROBATION AND AFTERCARE / CONFÉRENCE PERMANENTE EUROPÉENNE DE LA PROBATION (CEP)

**No nomination / Pas de nomination

PENAL REFORM INTERNATIONAL / REFORME PÉNALE INTERNATIONALE (PRI)

**No nomination / Pas de nomination

SOCIETY FOR THE REFORM OF CRIMINAL LAW / SOCIÉTÉ POUR LA REFORME DU DROIT PÉNAL (SRCL)

**No nomination / Pas de nomination

WORLD SOCIETY OF VICTIMOLOGY / SOCIÉTÉ MONDIALE DE VICTIMOLOGIE

**No nomination / Pas de nomination

INTERNATIONAL BAR ASSOCIATION / ASSOCIATION INTERNATIONALE DU BARREAU

**No nomination / Pas de nomination

COUNCIL OF BARS AND LAW SOCIETIES OF THE EUROPEAN COMMUNITY / CONSEIL DES BARREAUX ET DES SOCIÉTÉS DE DROIT DE LA COMMUNAUTÉ EUROPÉENNE

**No nomination / Pas de nomination

EUROPEAN FORUM FOR VICTIM-OFFENDER MEDIATION AND RESTORATIVE JUSTICE / FORUM EUROPÉEN POUR LA MÉDIATION VICTIME-DELINQUANT ET LA JUSTICE RÉPARATRICE

**No nomination / Pas de nomination

EUROPEAN MAGISTRATES FOR DEMOCRACY AND LIBERTIES / MAGISTRATS EUROPÉENS POUR LA DÉMOCRATIE. ET LES LIBERTÉS (MEDEL)

**No nomination / Pas de nomination

* * * * *

SECRETARIAT OF THE COUNCIL OF EUROPE /
SECRETARIAT DU CONSEIL DE L'EUROPE

Directorate General of Human Rights and Legal Affairs /
Direction Générale des droits de l'Homme et des affaires juridiques

Mr Jan KLEIJSEN	Director of Standard-Setting / Directeur des Activités Normatives
Mr Jörg POLAKIEWICZ	Head of the Law Reform Department Chef du Service des Réformes Législatives
M. Carlo CHIAROMONTE	Head of the Criminal Law Division / <u>Secretary to the CDPC</u> Chef de la Division du droit pénal / <u>Secrétaire du CDPC</u>
Ms Iliana TANEVA	Deputy head of the Criminal Law Division/ Secretary to the PC-CP Chef adjoint de la Division du droit pénal / Secrétaire du PC-CP
Mr Kristian BARTHOLIN,	Administrative officer / Administrateur Secretary to the PC-ISP / Secrétaire du PC-ISP
Mr Hasan BERMEK	Administrative Officer / Administrateur Secretary to the PC-OC - Secrétaire du PC-OC
Ms Camilla TESSENYI	Administrative officer / Administrateur Coordinator for Children matters
Mme Marose BALA-LEUNG	Assistant / Assistante
Ms Szilvia SIMOND	Assistant / Assistante
Mme Olga SOKOL	Assistant / Assistante
Ms Evgenia GIAKOUMOPOULOS	Trainee / Stagiaire
Ms Bernadette JOYEUX	Trainee / Stagiaire
Ms Delvin SUMO	Trainee / Stagiaire

European Directorate for the Quality of Medicines and Healthcare (EDQM) /
Direction Européenne de la Qualité du médicament et Soins de Santé (DEQM)

Ms Sabine WALSER	Administrative Officer / Administratrice
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Interpreters / Interprètes

Mme Sylvie BOUX
Mr Christopher TYCZKA
Mr Derrick WORSDALE

APPENDIX II



Strasbourg, 16 October 2009
CDPC/CDPC 2009plenary/OJ+LP/cdpc (2009) OJ prov. – E

CDPC (2009) OJ

**EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)**

58th Plenary Session

**Strasbourg, 12-16 October 2009
09 30 am**

AGENDA

**Council of Europe / Conseil de l'Europe
Agora Building / Bâtiment Agora
Room G 02 / Salle G 02**

1. **Opening of the meeting**
2. **Adoption of the draft agenda**
Working documents
 Draft agenda
 Draft annotated agenda
3. **Approval of the draft 3rd Additional Protocol to the European Convention on Extradition**
Working documents
 Draft Third Additional Protocol to the European Convention on Extradition
 Draft Explanatory Report
4. **Approval of the draft Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health**
Working documents
 Draft Convention of the Council of Europe on counterfeiting of medical products and similar crimes involving threats to public health
 (Please note that a revised version of the draft Convention has been uploaded on 5 October 2009. The amendments concern Article 17 (3) (a) where the words "collection or focal points" by mistake had been left out of the previous version)
 Draft explanatory Report
 Comments by delegations (in the original language only)
5. **Approval of the draft Recommendation on the Council of Europe Probation Rules**
Working documents
 Draft Recommendation (2009) XX of the Committee of Ministers to the member States on the Council of Europe Probation Rules
 Draft Commentary to Recommendation (2009) XX of the Committee of Ministers to the member States on the Council of Europe Probation Rules
6. **Penitentiary issues**
 - a. **Recent and forthcoming work of the Council of Europe related to penitentiary issues**
Working documents
 Conclusions of the 15th Conference of Directors of Prison Administration
 Current and future priorities and activities of the PC-CP
 Summary meeting report of the 62nd PC-CP meeting
 - b. **Dangerous prisoners/offenders**
Working documents
 29th Council of Europe Conference of Ministers of Justice, Resolution n° 1
 - c. **SPACE I and II**
Working documents
 SPACE I investigation 2007 (English only)
 SPACE II (bilingual)
7. **International cooperation in criminal matters**
 - a. **Jurisdiction**

- b. **Compensation of persons in extradition procedures**
Working documents
 Extract from the summary report of the 55th meeting of the PC-OC
 Questionnaire concerning compensation
 Replies to the questionnaire concerning compensation (bilingual)
(Warning ! 101 pages of reference document)
 Summary of replies

- c. **Follow-up to the 28th Conference of European Ministers of Justice: the relationship between asylum procedures and extradition procedures**
Working documents
 Extract from the summary report of the 56th meeting of the PC-OC
 Questionnaire on the relationship between the asylum procedures and the extradition procedures (bilingual)
 Replies to the questionnaire on the relationship between the asylum procedures and the extradition procedures
(Warning ! 82 pages of reference document)
 Summary of replies

- d. **Project on “Effective practical tools to facilitate judicial cooperation in criminal matters”**
Working documents
 Effective practical tools to facilitate judicial cooperation in criminal matters
 (English only)

- e. **Co-operation with other international institutions (EU, UN)**

- 8. **Scientific proof in criminal matters**
Working documents
 Scientific proof in the penal field

- 9. **Violence against women / domestic violence**
Working documents
 Interim Report
 Terms of reference
 Decision of the Committee of Ministers

- 10. **Council of Europe Conferences of Ministers of Justice**
 - a. **Follow-up to the 29th Conference (18-19 June 2009, Tromsø, Norway)**
Working documents
 Resolutions of the Conference

 - b. **30th Council of Europe Conference of Ministers of Justice (2011, Istanbul, Turkey)**

- 11. **Cybercrime**
Working documents
 Full meeting report of the 4th meeting of The Cybercrime Convention Committee (12-13 March 2009)
 Draft questionnaire on the need for direct transborder access to data and data flows where other measures are not adequate or fail

- 12. **Election of the Chair, Vice-Chair and four members of the Bureau**
Working documents
 Memorandum concerning the elections for the CDPC

13. **Any other business**
 - a. **Former Council for Police Matters (PC-PM)**

Terms of reference
Extract from the meeting report of the 56th CDPC plenary meeting (18-22 June 2007)
 - b. **Rule of law**

Working documents
 - c. **Parliamentary Assembly (PACE) recommendations**

Working documents
Recommendation 1881 (2009)
Opinion of the European Committee ON Crime Problems (CDPC) on Parliamentary Assembly Recommendation 1881 (2009) on the urgent need to combat so-called “honour crimes”
 - d. **Approval of the revised draft terms of reference of the Group of Specialists on Child-friendly Justice (CJ-S-CH)**
14. **Date of the next meeting of the CDPC**

APPENDIX III



Strasbourg, 22 October 2009
cdpc/docs 2009/cdpc (2009) 19 - e

CDPC (2009) 19

**EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)**

**Proposal of the Russian Federation for the re-wording of
Article 29 of the draft Council of Europe Convention on the
Counterfeiting of Medical Products and Similar Crimes
involving Threats to Public Health**

One delegation expressed its wish to provide the Convention with a simplified to the extent possible accession procedure for non-member States of the Council of Europe (Article 29). According to current text, non-member State willing to accede to the Convention is expected to go through three stages of the accession procedure which includes twice obtaining unanimous consent of the Parties. Taking into account the humanitarian goals of the Convention, it may be appropriate to foresee a facilitated procedure of accession for the States which cooperate with the relevant structures of the Council of Europe in the area of quality assurance of medical products, for example to the observers in the Commission of the European Pharmacopoeia. Therefore the CDPC requests the Committee of Ministers to consider envisaging the simplest possible procedure of the accession to the Convention.

APPENDIX IV



Strasbourg, 01.10.09
[cdcj/84^e réunion plénière/cdcj(2009)32 bil]

CDCJ (2009) 32
Bilingual/*Bilingue*

EUROPEAN COMMITTEE ON LEGAL COOPERATION
COMITÉ EUROPEEN DE COOPERATION JURIDIQUE

(CDCJ)

**DRAFT TERMS OF REFERENCE
OF THE GROUP OF SPECIALISTS ON CHILD-FRIENDLY JUSTICE
FOR 2010**

**PROJET DE MANDAT
DU GROUPE DE SPÉCIALISTES SUR UNE JUSTICE ADAPTEE AUX ENFANTS
POUR 2010**

Document prepared by the/*Document préparé par le*
Secretariat of the/ *Secrétariat du CDCJ*
Directorate General of Human Rights and Legal Affairs/
Direction générale des droits de l'Homme et des affaires juridiques

1. **Name of committee:** **Group of Specialists on child-friendly justice (CJ-S-CH)**
2. **Type of committee:** Ad hoc Advisory Group
3. **Source of terms of reference:** Committee of Ministers upon proposals of the European Committee on Legal Co-operation (CDCJ)

4. **Terms of reference:**

Having regard to:

- Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods (adopted by the Committee of Ministers on 14 December 2005 at the 951st meeting of the Ministers' Deputies);
- the Declaration and the Action Plan adopted by the Third Summit of the Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular chapters on "Strengthening democracy, good governance and the rule of law in member states" (Chapter I.3), "Ensuring compliance of the commitments made by member states and promoting political dialogue" (Chapter I.4), and "Building a Europe for children" (**Chapter III.2**);
- Resolution No. 2 on child-friendly justice, adopted at the 28th Conference of European Ministers of Justice (Lanzarote, October 2007);
- the United Nations Convention on the Rights of the Child;
- the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules);
- the European Convention on Human rights and the case law of the European Court of Human Rights;
- the European Convention on the Exercise of Children's Rights (1996, ETS No. 160);
- the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007, CETS No. 201);
- the Council of Europe programme "Building a Europe for and with children" and the Council of Europe Strategy on the rights of the child 2009-2011;
- the conclusions of the Conference "Building a Europe for and with children: Towards a strategy for 2009-2011", and in particular the conclusions of its Seminar 3: "Towards European guidelines on child-friendly justice: identifying core principles and sharing examples of good practice" (Stockholm, September 2008);
- the conclusions of the Council of Europe Conference on "The protection of children in European justice systems" (Toledo, 12-13 March 2009);
- the Memorandum of Understanding between the Council of Europe and the European Union, signed in May 2007;

Under the authority of the European Committee on Legal Co-operation (CDCJ), in co-operation with the European Committee on Crime Problems (CDPC), the Steering Committee on Human Rights (CDDH) and the European Commission for the Efficiency of Justice (CEPEJ) and in relation with the implementation of Project 2008/DGHL/1427 “Public and private law reform and implementation of standards”, Project 2008/DGHL/1432 “Monitoring the operation of Conventions on co-operation in the criminal field” and Project 2008/DGHL/1409 “Substantive legal analysis of HR issues and input in the development of CoE policies on such issues” of the Programme of Activities, the Group is instructed to:

- i. Finalise the drafting of the Council of Europe guidelines on child-friendly justice started in 2009;

Such guidelines, based on existing international, European and national instruments, should:

- serve as a practical tool for member states in adapting their judicial system to specific needs of children in criminal, civil or administrative justice;
- apply to all ways in which children are likely to be, for whichever reason and in whichever capacity, brought into contact with criminal, civil or administrative justice;
- consider the issue of the place and the voice of the child in judicial proceedings as well as extrajudicial proceedings (in particular alternative dispute resolution means), *before* the proceedings (for instance the procedural right to initiate proceedings and its implementation), *during* the proceedings and *after* the judicial decision (enforcement procedures) or sentence;
- ensure that, in the above-mentioned proceedings, the rights of children to information, to representation and to participation are fully respected;
- present examples of best practices, in particular in respect of the implementation of existing legal standards;

- ii. Pursue the identification of possible lacunae in law and in practice, and propose remedial solutions.

5. Composition of the committee:

5.A Members

The Group shall be composed of 16 members: a Chairman appointed by the CDCJ, a Vice-Chairman appointed by the CDPC and 14 specialists appointed by the Secretary General in consultation with the Chairpersons of the CDCJ (six specialists), of the CDPC (six specialists) and of the CDDH (two specialists).

The composition of the Group should reflect a multidisciplinary approach concerning all fields to be covered by the guidelines.

Participation costs of members to meetings of the Group will be borne by the Council of Europe budget sub-heads of the concerned committees.

5.B Participants

- i. The Parliamentary Assembly may send a representative to meetings of the Group, without the right to vote and at the expense of its administrative budget.
- ii. The following committees and organs may send representatives to meetings of the Group, without the right to vote and at the expense of their respective administrative budgets:
 - European Commission for the Efficiency of Justice (CEPEJ);
 - Consultative Council of European Judges (CCJE);
 - Consultative Council of European Prosecutors (CCPE);
 - European Steering Committee for Youth (CDEJ);
 - European Committee for Social Cohesion (CDCS).

5.C Other participants

- i. The European Commission and the Council of the European Union may send a representative to meetings of the Group, without the right to vote or defrayal of expenses.
- ii. States with observer status with the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send a representative to meetings of the Group, without the right to vote or defrayal of expenses.
- iii. The following intergovernmental organisations may send representatives to meetings of the Group, without the right to vote or defrayal of expenses:
 - Hague Conference on Private International Law (HCCH);
 - Interagency Panel on Juvenile Justice (IPJJ);
 - International Commission on Civil Status (ICCS);
 - United Nations Children's Fund (UNICEF);
 - Office of the United Nations High Commissioner for Human Rights (OHCHR).

5.D Observers

The European Network of Ombudspersons for Children (ENOC) may send a representative to meetings of the Group, without the right to vote or defrayal of expenses.

6. Working methods and structures:

- i. The Group should ensure, as far as possible and within the budgetary resources available, the meaningful participation of children and should take children's views into consideration in the preparation of the guidelines.
- ii. To fulfill its terms of reference and within the budgetary resources available, the Group may use consultants or scientific experts and can organise hearings and consultations.
- iii. Member states of the Council of Europe may send a representative to meetings of the Group, without the right to vote or defrayal of expenses.

7. Duration:

These terms of reference will expire on 31 December 2010.

1. **Nom du comité :** **Groupe de spécialistes sur une justice adaptée aux enfants (CJ-S-CH)**
2. **Type de comité :** Groupe consultatif ad hoc
3. **Source du mandat :** Comité des Ministres sur proposition du Comité européen de coopération juridique (CDCJ)
4. **Mandat :**

Eu égard :

 - à la Résolution Res(2005)47 concernant les comités et les organes subordonnés, leur mandat et leurs méthodes de travail (adoptée par le Comité des Ministres le 14 décembre 2005 lors de la 951e réunion des Délégués des Ministres) ;
 - à la Déclaration et au Plan d'action adoptés par le Troisième Sommet des Chefs d'Etat et de Gouvernement du Conseil de l'Europe (Varsovie, 16-17 mai 2005), en particulier aux chapitres concernant le « Renforcement de la démocratie, la bonne gouvernance et l'Etat de droit dans les États membres » (Chapitre I.3), « Assurer le respect des engagements souscrits par les Etats membres et promouvoir le dialogue politique » (Chapitre I.4), et « Edifier une Europe pour les enfants » (Chapitre III.2) ;
 - à la Résolution n° 2 sur une justice adaptée aux enfants, adoptée lors de la 28e Conférence des Ministres européens de la Justice (Lanzarote, octobre 2007) ;
 - à la Convention des Nations Unies sur les droits de l'enfant ;
 - à l'Ensemble de **règles** minima des **Nations Unies** concernant l'**administration** de la justice pour mineurs (**Règles de Beijing**) ;
 - à la Convention européenne des droits de l'homme et à la jurisprudence de la Cour européenne des droits de l'homme ;
 - à la Convention européenne sur l'exercice des droits des enfants (1996, STE n° 160) ;
 - à la Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels (2007, STCE n° 201) ;
 - au Programme du Conseil de l'Europe « Construire une Europe pour et avec les enfants » et à la stratégie du Conseil de l'Europe concernant les droits de l'enfant 2009-2011 ;
 - aux conclusions de la Conférence « Construire une Europe pour et avec les enfants : vers une stratégie pour 2009-2011 », et en particulier aux conclusions du Séminaire 3 : « Vers des lignes directrices européennes sur une justice adaptée aux enfants : identifier des principes fondamentaux et partager des bonnes pratiques » (Stockholm, septembre 2008) ;
 - aux conclusions de la Conférence sur « La protection des enfants dans les systèmes judiciaires européens » (Tolède, 12-13 mars 2009) ;
 - au Mémoire d'accord signé en mai 2007 entre le Conseil de l'Europe et l'Union européenne ;

Sous l'autorité du Comité européen de coopération juridique (CDCJ) et en coopération avec le Comité européen pour les problèmes criminels (CDPC), le Comité directeur pour les droits de l'Homme (CDDH), et la Commission européenne pour l'efficacité de la justice (CEPEJ), en relation avec la mise en œuvre du Projet 2008/DGHL/1427 « Réforme juridique dans le domaine des droits public et privé et application des normes », du Projet 2008/DGHL/1432 « Suivi de la mise en œuvre des conventions sur la coopération en matière pénale » et du Projet 2008/DGHL/1409 « Analyse juridique substantielle des questions des droits de l'homme et contribution au développement de la politique du Conseil de l'Europe sur ces questions » du Programme d'activités, le Groupe est chargé de :

- i. Finaliser l'élaboration – commencée en 2009 – du projet de lignes directrices du Conseil de l'Europe sur une justice adaptée aux enfants ;

Ces lignes directrices, en se basant sur les instruments internationaux, européens et nationaux existants, devront :

- servir d'instrument pratique pour les Etats membres dans le processus d'adaptation de leur système judiciaire aux besoins spécifiques des enfants dans le domaine de la justice pénale, civile et administrative ;
- s'appliquer à toutes les circonstances dans lesquelles les enfants sont susceptibles, pour quelque raison et en quelque qualité que ce soit, d'être en contact avec la justice pénale, civile ou administrative ;
- couvrir les questions de la place et de la voix de l'enfant dans les procédures tant judiciaires qu'extrajudiciaires (notamment les mécanismes alternatifs de résolution des litiges), *avant* la procédure (par exemple le droit d'initiative procédurale et sa mise en œuvre pratique), *pendant* la procédure, et *après* le prononcé de la décision (procédures d'exécution) ou de la sanction ;
- veiller à ce que, dans les procédures susmentionnées, les droits d'information, de représentation et de participation des enfants soient pleinement respectés ;
- présenter des exemples de bonnes pratiques, notamment en ce qui concerne la mise en œuvre d'instruments juridiques existants ;

- ii. Poursuivre l'identification des lacunes juridiques et pratiques éventuelles et proposer des solutions pour y remédier.

5. Composition du comité :

5.A Membres

Le Groupe sera composé de 16 membres : un Président nommé par le CDCJ, un Vice-Président nommé par le CDPC et 14 spécialistes désignés par le Secrétaire Général en consultation avec les Présidents du CDCJ (six spécialistes), du CDPC (six spécialistes) et du CDDH (deux spécialistes).

La composition du Groupe reflètera une approche multidisciplinaire concernant tous les domaines couverts par les lignes directrices.

Le coût de la participation des membres aux réunions du Groupe sera à la charge des articles budgétaires du Conseil de l'Europe correspondants aux comités concernés.

5.B Participants

- i. L'Assemblée parlementaire peut envoyer un représentant aux réunions du Groupe, sans droit de vote et à la charge de son budget administratif.
- ii. Les comités et organes suivants peuvent envoyer des représentants aux réunions du Groupe, sans droit de vote et à la charge des articles budgétaires correspondants du Conseil de l'Europe :

- Commission européenne pour l'efficacité de la justice (CEPEJ) ;
- Conseil consultatif de juges européens (CCJE) ;
- Conseil consultatif de procureurs européens (CCPE) ;
- Comité directeur européen pour la jeunesse (CDEJ) ;
- Comité européen pour la cohésion sociale (CDCS).

5.C Autres participants

- i. La Commission européenne et le Conseil de l'Union européenne peuvent envoyer un représentant aux réunions du Groupe, sans droit de vote ni remboursement de frais.
- ii. Les Etats dotés du statut d'observateur auprès du Conseil de l'Europe (Canada, Saint-Siège, Japon, Mexique, Etats-Unis d'Amérique) peuvent envoyer un représentant aux réunions du Groupe, sans droit de vote ni remboursement de frais.
- iii. Les organisations intergouvernementales suivantes peuvent envoyer un représentant aux réunions du Groupe, sans droit de vote ni remboursement de frais :
 - Conférence de La Haye de droit international privé (HCCH) ;
 - Groupe interinstitutions sur la justice pour mineurs (IPJJ) ;
 - Commission internationale de l'état civil (CIEC) ;
 - Fonds des Nations Unies pour l'enfance (UNICEF) ;
 - Haut-Commissariat des Nations Unies aux Droits de l'Homme (OCHCR).

5.D Observateurs

Le Réseau européen des médiateurs pour enfants (ENOC) peut envoyer un représentant aux réunions du Groupe, sans droit de vote ni remboursement de frais.

6. Structures et méthodes de travail :

- i. Le Groupe assurera, dans la mesure du possible et dans la limite des crédits budgétaires disponibles, la participation significative d'enfants et veillera à prendre en compte les avis des enfants dans l'élaboration des lignes directrices.
- ii. Pour accomplir son mandat et dans la limite des crédits budgétaires disponibles, le Groupe peut avoir recours à des consultants ou des experts scientifiques et peut organiser des auditions et consultations.
- iii. Les Etats membres du Conseil de l'Europe peuvent envoyer un représentant aux réunions du Groupe, sans droit de vote ni remboursement de frais.

7. Durée :

Le présent mandat prendra fin le 31 décembre 2010.

APPENDIX V



Strasbourg, 23 September 2009
pc-cp\docs 2008\pc-cp (2008) 04rev5 – e

PC-CP (2008) 04rev5

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

CURRENT AND FUTURE PRIORITIES AND ACTIVITIES OF THE PC-CP

DISCUSSION PAPER

prepared by the Directorate General of Human Rights and Legal Affairs

- a) re-examining the European Prison Rules on a regular basis and proposing to the CDPC their updating if necessary, as detailed in its rules of procedure **(on-going task) (first round in 2011)**
- b) collecting information regarding the implementation of the European Prison Rules and the European Rules on Community Sanctions and Measures in CoE member States and on any positive developments and possible difficulties in this respect **(on-going task)**
- c) preparation of the Conferences of Directors of Prison Administration (CDAP) **(on-going task) (next Conference in 2011)**
- d) providing guidance with regard to the collection and publication of SPACE I and SPACE II **(on-going task)**
- e) following the development of European prison systems and of the services concerned with the implementation of community sanctions and measures, examination of the functioning and implementation of the European Prison Rules and the European Rules on community sanctions and measures and other relevant standard-setting texts, and making proposals for improving their practical application **(on-going task)**
- f) examining the situation with the treatment of foreign prisoners in the Council of Europe member States and the existing policies at national level aimed at facilitating their social reintegration, where appropriate by transferring them to their home country. Updating if necessary of Recommendation n° R(84) 12 concerning foreign prisoners **(follow-up to the conclusions of the 14th and 15th CDAP Conferences)**
- g) carrying out a study of the concept of dangerous offenders, including perpetrators of domestic violence as well as their supervision and treatment in closed settings and in the community. **(follow-up to the conclusions of the 14th CDAP Conference in 2007 as well as to Resolution n° 1 on preventing and responding to domestic violence adopted at the 29th Council of Europe Conference of Ministers of Justice, Norway 2009)**
- h) carrying out a survey regarding the implementation in general of Recommendation n° R(98)7 concerning the ethical and organisational aspects of health care in prison and of Recommendation Rec(2003)23 on the management by prison administrations of life sentence and other long-term prisoners and in particular regarding the treatment of elderly prisoners and mentally disordered prisoners. **(follow-up to the conclusions adopted at the 14th CDAP Conference)**
- i) examining whether a Code of ethics for prison staff based on Recommendation n° R(97) 12 on staff concerned with the implementation of sanctions and measures, as well as on the European Prison Rules needs to be drafted for the attention of the national prison administrations **(follow-up to the conclusions of the 15th CDAP Conference)**

APPENDIX I**Ministers' Deputies
Decisions**[CM/Del/Dec\(2008\)1037/10.3/appendix5E / 10 October 2008](#)

1037th meeting, 8 October 2008**Decisions adopted**

**Appendix 5
(Item 10.3)****Revised terms of reference of the Council for Penological Co-operation (PC-CP)****Fact sheet**

Name of Committee:	Council for Penological Co-operation (PC-CP)
Compliance with Resolution Res(2005)47:	YES
Programme of Activities: project(s)	Project 2008/DG-HL/1430 "Criminal law and penal sanctions – prison systems and alternatives to imprisonment"
Project relevance:	Implementation of: the Declaration and the Action Plan adopted at the Third Summit of the Heads of State and Government of the Council of Europe (16-17 May 2005, Warsaw); the Road Map for the implementation of the Action Plan, adopted by the Committee of Ministers and revised on 28 September 2005 (document CM(2005)145 rev); Resolution No. 2 on the social mission of the criminal justice system – restorative justice (paragraph 19) adopted by the 26th Conference of the European Ministers of Justice (7-8 April 2005, Helsinki); Resolution No. 2 on child-friendly justice (paragraph 6) adopted by the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote, Spain).
Project added value:	The Council of Europe is the leading European organisation in the field of penitentiary questions and community sanctions and measures. Two very important texts have been adopted in this area, namely Recommendation

	<p>No. R (92) 16 on the European Rules on community sanctions and measures and Recommendation Rec(2006)2 on the European Prison Rules (EPR). The PC-CP is entrusted with several ongoing tasks, namely to follow the implementation of the EPR and the European Rules on community sanctions and measures; to make proposals to the CDPC for revision of existing legal instruments; to re-examine on a regular basis the EPR; to prepare the Conferences of Directors of Prison Administration (CDAP) and to provide guidance with regard to the collection and publication of the annual penal statistics of the Council of Europe SPACE I and SPACE II. The PC-CP is also currently drafting two new recommendations, namely a recommendation on the European Rules for juvenile offenders and a recommendation on probation and aftercare services in Europe.</p>
<p>Financial information:</p>	<p>5 meetings, 9 members, 3 scientific experts. The PC-CP has an annual budget of €60 000 of which:</p> <ul style="list-style-type: none"> - €12 000 per meeting for the reimbursement of the travel and per diem costs of 9 members and 3 scientific experts. <p>A separate budget is provided for:</p> <ul style="list-style-type: none"> - € 22 500 for interpretation; - € 10 000 for translation; - € 7000 for document production (including SPACE I and SPACE II).

Revised terms of reference of the Council for Penological Co-operation (PC-CP)¹

1. **Name of Committee:** Council for Penological Co-operation (PC-CP)
2. **Type of Committee:** Ad hoc Advisory Group
3. **Source of terms of reference:** Committee of Ministers, on the suggestion of the European Committee on Crime Problems (CDPC)

4. **Terms of reference:**

Having regard to:

- Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods;
- the Declaration and Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005), in particular concerning the issues related to the promotion of common fundamental values: human rights, rule of law and democracy, as well as the security of citizens;
- the Council of Europe conventions and their protocols as well as to the recommendations of the Committee of Ministers in the penal field;²
- the relevant case law of the European Court of Human Rights;
- the standards developed by the Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment (CPT);
- the work of the Commissioner for Human Rights; and
- the relevant recommendations of the Parliamentary Assembly.³

Under the authority of the CDPC and in relation with the implementation of Project 2008/DG-HL/1430 "Criminal law and penal sanctions – prison systems and alternatives to imprisonment" of the Programme of Activities, the PC-CP is instructed to:

- i. follow the development of European prison systems and of the services concerned with the implementation of community sanctions and measures;
- ii. examine the functioning and implementation of the European Prison Rules and the European Rules

¹ Adopted: see CM/Del/Concl(87)410/35(10) and CM(87)167, Addendum V

Revised: see CM(91)118, item I.B.9 and CM/Del/Concl(91)461/20a(9)

see CM/Del/Dec(94)516/10.4 and CM(94)112, item 3

see CM/Del/Dec(94)523, item 11.3

see CM/Del/Dec(95)551, item 11.2 (first part) concl10

see also CM/Del/Dec(96)572, item 10.1 and CM(96)99, Appendix VII

see CM/Del/Dec(97)600, item 10.2a and Appendix 18 (Appendix 19 for the revised rules of procedure)

see CM/Del/Dec(2006)967, item 10.3.

² European Treaty Series of the relevant conventions: 24, 30, 51, 82, 86, 98, 99, 112, 126, 167 and 182. Reference number of the relevant recommendations: R (82) 16; R (82) 17; R (84) 11; R (84) 12; R (88) 13; R (89) 12; R (92) 16; R (93) 6; R (97) 12; R (98) 7; R (99) 19; R (99) 22; Rec(2000)22; Rec(2003)22; Rec(2003)23; Rec(2006)2 and Rec(2006)13.

³ *Inter alia* Rec 1257 (1995); Rec 1469 (2000); Rec 1656 (2004) and Rec 1747 (2006).

on community sanctions and measures as well as of other relevant Committee of Ministers recommendations, and make proposals for improving their practical application;

- iii. make proposals to the CDPC for revision of existing legal instruments and other legal acts in the penal field with a view to achieving coherence and comprehensiveness of the standards in the area;
- iv. re-examine on a regular basis the European Prison Rules and to propose to the CDPC their updating if necessary, as detailed in its rules of procedure;
- v. prepare new draft legal instruments and reports on penological matters on the basis of ad hoc terms of reference;
- vi. formulate opinions on penological matters at the request of the CDPC and of member states;
- vii. while taking account of the progress of its ongoing work, prepare, under its responsibility and within its field of competence, proposals to the CDPC for the Programme of Activities for the coming years;
- viii. prepare the Conferences of Directors of Prison Administration (CDAP) and choose rapporteurs;
- ix. provide guidance with regard to the collection and publication of the annual penal statistics of the Council of Europe SPACE I and SPACE II.

5. Composition of the Committee:

5.A. Members

The PC-CP shall be composed of 9 members, elected by the CDPC, with the following desirable qualifications: high-level representatives of prison administrations and/or of services entrusted with the implementation of community sanctions and measures; researchers or other experts having a thorough knowledge of penological questions.

The Council of Europe budget will bear their travel and subsistence expenses.

5.B. Participants

- i. The following bodies may each send a representative to meetings of the Committee, without the right to vote and at the charge of the corresponding Council of Europe budget sub-heads:
 - European Committee on Crime Problems (CDPC);
 - European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).
- ii. The Parliamentary Assembly may send a representative/representatives to meetings of the Committee, without the right to vote and at the charge of its administrative budget.
- iii. The Council of Europe Commissioner for Human Rights may send a representative/representatives to meetings of the Committee, without the right to vote and at the charge of its administrative budget.

5.C. Other participants

- i. The member states of the Council of Europe may send a representative to the meetings of the Committee, without the right to vote or defrayal of expenses.
- ii. The European Commission and the Council of the European Union may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses.
- iii. The following intergovernmental organisations may send representatives to meetings of the Committee, without the right to vote or defrayal of expenses:

- United Nations Committee against Torture (CAT);
- United Nations Children's Fund (UNICEF).

5.D. Observers

The following non-governmental organisations may send a representative to meetings of the Committee, without the right to vote or defrayal of expenses:

- the European Organisation for Probation (CEP);
- International Centre for Prison Studies ;
- International Association of Juvenile and Family Court Magistrates (IAJFCM).

6. Working methods and structures:

In its work, the PC-CP shall be assisted by three scientific experts with specific knowledge of relevant legislation and legal practice, of international norms and conventions relating to penitentiary issues and community sanctions and measures, as well as of the European Convention on Human Rights and its case law and of recent developments in research and practice in the different European member states.

The Council of Europe budget will bear the travel and subsistence expenses of the scientific experts.

7. Duration:

These terms of reference will expire on 31 December 2010.

APPENDIX VI



11 September 2009

CDAP(2009)04

**15th CONFERENCE OF DIRECTORS OF PRISON ADMINISTRATION
"OVERCROWDED PRISONS: LOOKING FOR SOLUTIONS"**

(9-11 September 2009, Edinburgh)

CONCLUSIONS BY THE GENERAL RAPporteur

Venue:

Roxburghe Hotel, 38 Charlotte Square, Edinburgh EH2 4HQ

www.macdonaldhotels.co.uk/roxburghe/

Tel: +44(0)844 879 9063

Fax: +44(0)131 240 5555

15th Conference of Directors of Prison Administration
Edinburgh, 9 – 11 September 2009

Conclusions by the General Rapporteur⁴

The prison administrations in the countries which are members of the Council of Europe are responsible for over two million prisoners in 47 countries, which stretch from the Atlantic to the Pacific Ocean and from the Arctic Circle to the Mediterranean Sea and beyond to the Caucasus. This means that the Directors of Prison Administrations in these countries can speak with a unique authority on matters to do with imprisonment in this region.

The Conference of Directors of Prison Administration, the CDAP, has a distinguished history. For many years from the early 1970s it held biennial meetings in Strasbourg. These were important opportunities for Directors General to meet each other in person and to discuss matters of common interest. The conferences have achieved a great deal over the years and many of the important recommendations on prison matters made by the Committee of Ministers have their origins in the conclusions which were agreed at these meetings. In recent years the conferences have been co-sponsored by member states and this was the first such to be held in Scotland, and indeed in the United Kingdom. It was attended by delegates from some 46 jurisdictions, including 23 Directors General.

If one looks back at the records of these conferences, one can identify a clear pattern of issues which have been regularly discussed as being problematic in all prison systems. In respect of structures, they include relationships with the parent government department and other parts of the criminal justice system, shortage of financial and other resources, overcrowding and sub-standard accommodation. In respect of personnel, they include recruitment, training and salary issues. In respect of prisoners, they include health matters, particularly in relation to mental health and infectious diseases, education, work and skills training, and preparation for reintegration into civil society. In recent years there has been an increasing realisation that prisons cannot be discussed in a vacuum and that directors of prison administrations need to be alert to the wider social, political and judicial environment in which they operate.

The theme of this year's conference was *Overcrowded prison systems: Looking for solutions*. This was also one of the themes of the 12th CDAP conference in 1997 and it is interesting to contrast the situation then with that of today. Before commenting on that, one might say a word about comparative rates of imprisonment over the last 12 years or so. The picture is by no means even. In a number of countries there have been significant reductions in the use of imprisonment over the last ten years. These include Bulgaria, Estonia, Germany, Lithuania, Portugal and Russia. There have been relatively large increases in countries such as Greece, Italy, Spain, Turkey and the three jurisdictions in the United Kingdom. Some countries, such as Denmark have remained stable; while The Netherlands had a significant rise, followed by a substantial reduction, which still leaves it above its 1998 level.

As part of the preparation for this conference, the Council of Europe decided to seek information about the extent to which Recommendation (99) 22 concerning *Prison overcrowding and prison population inflation* was being implemented in member states. A questionnaire was circulated to all member states and received 24 responses. Even allowing for the partial nature of this response, some broad patterns can be identified. In many of the respondent countries of Central and Eastern Europe there has been a reduction in the overall numbers of prisoners and a significant reduction in the number of pre-trial prisoners. This has been attributed in the main to legislative changes and to sentencing practices. In Western Europe, with some notable exceptions, overall prison populations and the proportion of pre-trial prisoners have increased in the majority of respondent countries. The reasons given for these increases have been the same as those which contributed to the decrease in the two other regions of Europe. In addition, it would appear that the particular rise in the number of pre-trial prisoners can, in some countries, be attributed to the increase in the number of foreign prisoners.

⁴ Professor Andrew Coyle, International Centre for Prison Studies, School of Law, King's College,

According to the latest available official statistics, 24 of our member states record more than 100 per cent occupancy of their prisons, with seven of them recording more than 20 per cent over capacity.

That is the statistical background to the conference. The papers which were presented and the discussions which took place in the workshops and in the plenary sessions added substance to this framework and a number of clear themes and issues emerged which will be of interest to the Council for Penological Cooperation, the part of the Council of Europe which sponsors this conference, and which in turn is a standing advisory body to the European Committee on Crime Problems. I should like to refer to a few of these themes.

Prisons do not operate in a vacuum

One of the key messages of the conference, which repeated what has been said at many of the recent meetings of the CDAP, is that one cannot consider any prison system in a vacuum or in isolation from other parts of the criminal justice system.

In his welcoming address, Mike Ewart, Chief Executive of the Scottish Prison Service, suggested that the management of prisons, which deprive citizens of their liberty, could in one sense be seen to be at the core of role of the state and of governance. For this reason, it was important that the debate about their use should be taken into the wider civil society. We were reminded several times that the way prisons are managed in individual countries is linked closely to the social structures within each state. Winston Churchill, Fyodor Dostoyevsky and more recently Nelson Mandela have pointed out that the manner in which prisons are used and are managed reflect the values to which each society adheres. Several speakers pointed out that levels of imprisonment in each country are usually influenced much more by political decisions than by levels of crime or rates of detection of crime. Signor Ionta, Head of the Penitentiary Administration in Italy, said that legislators needed to decide once and for all what prison should be used for. The Council of Europe may wish to consider the need to involve other players in the criminal justice system, particularly prosecutors and judges, in discussions about this matter.

Prison reform as one part of a wider package on reforms

We received a number of very clear messages on this theme from a number of member states, for example, from Russia, from Italy and from Portugal.

Yuri Kalinin, Deputy Minister of Justice for the Russian Federation, spoke about the reform of the Russian prison system and its experience in dealing with prison overcrowding. He described how, at the beginning of the 1990s, Russia embarked on a radical reform of penal policy and practice which involved radical change at several levels. The first was in respect of the legislation. The previous very high rate of imprisonment was a reflection, he told us, not of high crime rates, but of the fact that detention was the primary form of punishment imposed by the court. Legislative changes led to a change in the sentencing practices of the courts, with much greater use of alternatives to imprisonment, at both the pre-trial stage and also on conviction. Pre-trial detention is now a decision of the court, rather than of the prosecutor. There is now much greater use of conditional release for prisoners who are not considered to be a threat to public safety and other features, such as suspended sentences for mothers with children below the age of 14 years. As a result of initiatives such as these, there has been a reduction in the prison population of 209,000 since 1992.

Mr Kalinin told us that President Medvedev has taken a personal interest in penal reform and the Presidium of the State Council has noted that ultimately the solution of the current problems will not be found within the prison system itself but will depend on complex changes in judicial and penal policy, as well as in the activities of other law enforcement agencies.

Portugal tabled a very interesting paper describing its reform process. Over a short number of years the proportion of pre-trial prisoners has gone down from 30% to 23% and in the last ten years prison numbers have fallen from 15,000 to 11,000. This reduction has been the result of a radical reform of the Penal Code and the Procedural Code. These legislative changes introduced several new crimes but crucially they emphasised that prison was to be a place of last resort. The key features of the changes were a reduction in pre-trial delays, an expansion in the application of alternatives to prison and an increase in provisional release with electronic

monitoring. One of the important consequences of this reduction in the prison population is that the prison service has been able to begin a programme of radical re-organisation of its services.

Misuse and overuse of prison can weaken public safety

In a number of jurisdictions politicians and other public commentators suggest that public safety can best be served by an increased use of prisons. In opposition to this assertion, Mike Ewart pointed out that the overuse of prison can in fact reduce general levels of public safety. In similar vein, Jan Kleijssen of the Council of Europe noted that overcrowded prisons can be a breeding ground for criminality and of organised crime and he drew attention to the increasing number of judgements from the European Court of Human Rights about prison conditions, particularly those which found violations of Article 3 of the European Convention on Human Rights, even when the inhuman and degrading treatment was unintentional.

Prison as an institution for adult males

At several points in the conference speakers reminded us that prisons are primarily institutions organised for adult males and as such they frequently overlook the needs of other groups of prisoners, such as women and juveniles. Jan Kleijssen commented on the situation in a number of member states where juveniles and young people were for all practical purposes treated as adults. He advised the conference that the Council was preparing guidelines about the need for “child friendly justice”. André Vallotton told us that the Council for Penological Cooperation had recently finished work on a set of new rules for juvenile offenders subject to sanctions, which had been adopted by the Committee of Ministers in November 2008 as Recommendation (2008) 11. It was suggested that the Council of Europe might usefully turn its attention to the specific problems of women who are in prison.

What is a prison?

Several speakers challenged us to re-consider our concept of what a prison should be. There is a general understanding that a prison should be a place surrounded by high walls or fences, with locks, bars and bolts, and in which prisoners are kept under close confinement, continuously supervised by staff. Some of the speakers questioned whether we needed to review that picture. Yuri Kalinin told us that in the whole of Russia, with its 800,000 prisoners, there are only seven prisons in the style of Western Europe. The vast majority of institutions for convicted prisoners are colonies, where prisoners have relative freedom of movement and control of their own lives within secure perimeters. In most jurisdictions there is an assumption that all new prisons should be built to high security standards. In his workshop Roger McGarva of the Penological Council asked whether this needed to be so and whether in fact we should be extending the use of low security prisons. This is a matter which the Council of Europe might raise with member states.

The conference then considered a number of issues which are either new challenges or a re-statement of old challenges.

Pre-trial detention

The first related to the use of pre-trial detention. Irene Koeck, who chaired the workshop on this issue, reminded us of Council of Europe Recommendation (2006) 13 on the use of remand in custody. She talked of the need to reduce the use of pre-trial detention by use of alternative provision, pointing out the average rate in EU countries as 25% of all prisoners on pre-trial detention. She reminded us that pre-trial prisoners, for whom there should be a presumption of innocence, are often kept in the worst conditions, languishing in their cells all day, with no opportunity to work or to engage in purposeful activities.

Anton van Kalmthout described the new publication by the EU *Analysis of minimum standards in pre-trial detention and the grounds for regular review in member states of the EU*. This review identified a number of issues to which the Penological Council might turn its attention. They include the increasing number of prisoners being held on non-criminal charges, for example, on immigration grounds, detention orders, preventive detention or other civil matters. The report also identified the need to consider the situation of extended detention in police custody. It also concluded that, while many alternatives to pre-trial detention exist, in practice they are often little used.

Life and other long sentences

André Vallotton began the workshop on these issues with reference to Recommendation (2003) 23 on this subject and its provisions on issues such as regular assessment, maintenance of contact with the outside world and minimal use of isolation. He commented on a new public policy on some countries of 'zero tolerance' and the tendency to give security matters a primacy over individual human rights. Phil Wheatley described the situation in England and Wales, particularly in reference to the two types of indeterminate sentence: life imprisonment and public protection sentences. Together these two groups make up 15% of the total number of prisoners, with sentences served being progressively longer, mainly because of longer judicial tariffs coupled with reduced use of parole.

Foreign prisoners

Several references were made to the increasing proportion of foreign national prisoners in many jurisdictions. In 13 Council of Europe jurisdictions over 30 per cent of all prisoners are foreign nationals, and in five of those countries the proportion is over 50 per cent. This subject was explored in detail in the workshop chaired by Rona Sweeney of the Scottish Prison Service, which reached the clear conclusion that this very problematic issue needed much more detailed examination.

Prisons as places of radicalisation and extremism

Per-Olof Humla of the Swedish Prison and Probation Service described the results of the roundtable held in Sweden recently on how to respond to the danger that prisons might become places of radicalisation and extremism. The conference had noted that, while the terminology may be new, the issue of prisoners who are motivated on national, political or religious grounds is not a new one. Indeed, it is one in which a number of prison systems have a great deal of experience and we can learn much from each other. There was also emphasis on the need to have a clear definition of the problem and not to overstate it. This issue was discussed by prison directors at the CDAP in Vienna in 2007, but it is one which the Council for Penological Cooperation could usefully consider in greater detail in the near future.

Reintegration / re-entry / resettlement

The fourth workshop considered the important issues of reintegration, and resettlement on release. It identified critical elements, such as the need for health provision to be aligned with that in the community and the need to involve prisoners' families in planning.

A code of ethics for prison staff

For a number of years now there has been discussion about the need to provide prison staff with a code of ethics, similar to that which other professions already have. Andrew Coyle referred to the fact that one of the most disturbing features of the barbarities which occurred in Abu Ghraib prison in 2004 was that they had been carried out by persons who were trained prison personnel. He suggested that these people had lost their moral compass and had ceased to see the prisoners for whom they were responsible as human beings.

As new states have acceded to the Council of Europe over the last 20 years there has been a requirement that prison administrations should be part of a Ministry of Justice rather than a Ministry of the Interior. This has been based on the fundamental principle of separation between the police, who are responsible for investigating crime and detecting criminals, and the prison authorities who are responsible for detaining accused persons and those who are convicted. It may be that this distinction needs to be re-asserted and one way of doing this would be by agreeing a code of ethics for prison staff.

The French prison Administration has given a lead in using the European Prison Rules 2006 as a framework for a code of ethics for prison personnel. At this conference the prison administration of Catalunya tabled a draft paper entitled *Ground rules for an ethical code for prison staff*. This is another key issue which should be taken up by the Penological Council.

The role of the Council of Europe

The final theme which permeated discussion at this CDAP conference was that of the role of the Council of Europe in coordinating professional relationships among prison directors in its 47 member states. We were reminded by William Rentzmann, the longest serving Director of Prisons in all member countries of the long tradition of the Council of Europe in this role. While it is to be welcomed that other bodies, such as the European Commission and the European Union have recently taken an increasing interest in prison matters, the Council of Europe is in a unique position to bring together prison directors from the region of greater Europe on a regular basis. In our lifetime this affiliation of countries from Western, Central and Eastern Europe has been the driver for momentous change, including the abolition of the death penalty from the Atlantic to the Pacific, of the establishment of professional prison administrations within national Ministries of Justice and of increasing professionalism of prison staff. This is a proud record, which this conference has reaffirmed and which the Council of Europe should work constantly to safeguard.

I should like to end by thanking the Scottish Government and the Scottish Prison Service for co-sponsoring this conference and for providing such a friendly environment and warm hospitality over the last few days.

APPENDIX VII



<http://www.coe.int/tcj/>

Strasbourg 13/02/2009
[PC-OC\Docs 2009\PC-OC (2009)04 rev]

PC-OC (2009) 04 rev

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)

**Summary of the replies to the questionnaire on
the relationship between asylum procedures and extradition procedures**

Introduction:

At the 28th Conference of the European Ministers of Justice (25-26 October 2007, Lanzarote), the Ministers of Justice adopted Resolution No. 1 on access to justice for migrants and asylum seekers. On the basis of paragraph 16c of this Resolution, the Committee of Ministers entrusted the CDPC with the task of examining “the relationship between asylum procedures and extradition procedures”. The CDPC Bureau decided to submit this part of the Resolution to the PC-OC and instructed it to take stock of the situation in different member States and to reflect on possible responses to common challenges.

At its 54th meeting (28-30 April 2008), the PC-OC discussed the question of the relationship between asylum and extradition procedures and adopted a questionnaire dealing with the various issues identified. It decided to address this questionnaire to all States Parties to the European Convention on Extradition.

27 member States have replied to the questionnaire. These replies are set out in the document PC-OC (2008) 18 Rev 3, available on the PC-OC website (www.coe.int/tcj).

The following is a summary of the replies to this questionnaire.

1. Does your national law contain provisions on the regulation of the relationship between extradition and asylum procedures (please provide details of the regulation)?

16 member States⁵ have no provisions regulating the relationship between extradition and asylum procedures in their national law. In their replies to this question, 12 member States⁶ referred to the fact that under their legislation extradition of a person who is rightfully afforded asylum is not possible to the country of his/her origin.

In most countries, the two procedures are governed by two separate sets of rules, although the outcome of the asylum procedure can influence the decision in the extradition procedure. Extradition matters often fall under the jurisdiction of the (criminal) courts whereas the granting of asylum and refugee protection is decided on by an administrative entity (for example, the Federal Office for Migration and Refugees in Germany, l'Office français de Protection des Réfugiés et Apatrides in France, and the Ministry of Interior in Slovenia).

Finland mentioned article 7 of the EU Asylum procedures Directive⁷, which states that applicants have the right to remain in the member State, while the asylum application is pending. Portugal mentioned Council Directives 2004/83/CE on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, and 2005/85/CE on minimum standards on procedures in member States for granting and withdrawing refugee status.

⁵ Albania, Denmark, Estonia, Finland, France, Georgia, Germany, Italy, Latvia, the Netherlands, Norway, Russia, Slovenia, Sweden, Switzerland, Turkey.

⁶ Armenia, Austria, Czech Republic, Hungary, Iceland, Lithuania, Poland, Portugal, Romania, Russia, Slovakia, Spain.

⁷ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

2. Under your national law, can a person sought for extradition be extradited to his country of origin when that person has applied for asylum/is the subject of asylum procedures in your country?

In 14 member States⁸ a person cannot be extradited before a final decision has been taken on his/her asylum application. France replied that although a person who has applied for asylum will not be extradited, the extradition and asylum procedures are carried out independently and in parallel. Hungary specified that extradition in this situation is only possible if such extradition is requested by a third country identified in the Act of Asylum as a safe country.

In 8 member States⁹ the extradition of an individual who has already applied for asylum is possible, at least in theory, even though the court dealing with the extradition matter may take into account that asylum procedures are ongoing.

3. If so:

(As their replies to the previous question were negative, Armenia, Denmark, Norway and Portugal did not reply to the following five questions. Latvia stated that its legislation has no special provisions on these matters.)

3.1 What procedure has priority when a person having applied for asylum in your country is the subject of extradition proceedings?

13 member States¹⁰ responded that the asylum procedure has priority when this situation occurs.

Germany and France specified that although the asylum and extradition procedure are two separate procedures which are carried out independently, suspension of the extradition procedure is possible awaiting the outcome of the asylum procedure.

5 member States¹¹ have no regulation on which procedure has priority.

Austria stated that the extradition procedure has priority over other legal provisions concerning the removal of the person from Austria.

3.2 Is it possible to execute a request for provisional arrest of a person who is the subject of asylum procedures?

21 member States¹² replied that it is possible to execute a request for provisional arrest of a person who is the subject of asylum procedures. Germany, Poland and Sweden specified that when assessing whether the preconditions for provisional arrest are met, a pending asylum procedure may be taken into account on a case-by-case basis. Switzerland stated that it is not possible to arrest a person who has been granted refugee status. The Netherlands mentioned that although it is legally possible, in practice a person will not be detained with a view to his extradition as long as extradition is not expected in the near future.

⁸ Armenia, Denmark, Estonia, Finland, Georgia, Latvia, Lithuania, the Netherlands, Norway, Portugal, Slovakia, Slovenia, Spain, Turkey.

⁹ Austria, Czech Republic, Germany, Iceland, Italy, Poland, Sweden, Switzerland.

¹⁰ Albania, Estonia, Finland, Georgia, Hungary, the Netherlands, Norway, Lithuania, Russia, Slovakia, Slovenia, Spain, Turkey.

¹¹ Czech Republic, Italy, Poland, Sweden and Switzerland.

¹² Albania, Austria, Czech Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Italy, Lithuania, the Netherlands, Poland, Romania, Russia, Slovenia, Slovakia, Spain, Sweden, Switzerland

Turkey stated that it is not possible to execute a request for provisional arrest until the conclusion of the asylum procedure.

3.3 Under what circumstances can the extradition of a person who has applied for asylum be allowed?

7 member States¹³ replied that extradition is only allowed when the request for asylum has been denied (or when refugee status has been revoked), or that there are no circumstances that allow for extradition of a person while asylum procedures are ongoing.

Romania replied that asylum-seekers cannot be extradited, except where there are reasonable grounds to believe that they “intend to develop acts of terrorism or sustain such acts”, or that they can be considered a danger to the security of the Romanian State or to the public order.

For the majority of other responding States, this question seems to be decided on a case-by-case basis, provided that extradition is compatible with principles of international law, the ECHR, the Geneva Convention relating to the status of refugees or equivalent provisions in national law. Italian legislations specifically precludes extradition where death penalty is provided by the law of the requesting State.

Lithuania specifically referred to the exception to the principle of *non-refoulement* as provided in article 33(2) of the Geneva Conventions, as the sole circumstance which would allow the extradition of a person who has applied for asylum.

3.4 Does the granting of an extradition request have an impact on pending asylum procedures?

In 9 member States¹⁴, the granting of an extradition request has, at least in theory, no direct impact on the pending asylum procedures. Slovenia adds that if asylum is granted after a positive extradition decision, a new extradition decision will have to be issued.

Nevertheless, many States stated that the grounds of the extradition decision may, in practice, have an influence on the outcome of the asylum procedure.

Austria replied that when extradition is granted, asylum procedures are stayed. In Spain, in a similar situation, the Council of Ministers can decide on the revocation of asylum. France and Russia stated that the facts examined during the extradition procedure may constitute a ground for refusing asylum, according to Article 1.F of the Geneva Convention. France referred specifically to the case of Rwandan nationals who were refused asylum on the basis of arrest warrants issued by the International Criminal Court for Rwanda.

Switzerland specified that, where extradition has been granted before application for asylum, the person may be surrendered.

Lithuania and Turkey stated that a request for extradition can only be granted if asylum has been refused. Similarly in Georgia, asylum is decided on first.

Albania replied that this question would be decided on a case-by-case basis.

¹³ Albania, Estonia, Finland, the Netherlands, Slovenia, Switzerland and Turkey.

¹⁴ Czech Republic, Estonia, Finland, Germany, Iceland, Hungary, the Netherlands, Slovenia, Sweden.

3.5 Is it possible to make extradition subject to conditions, by requiring human rights procedural guarantees from the requesting State, to be monitored by the requested State?

11 member States¹⁵ replied that it is possible to make extradition subject to certain guarantees (many specifying that this would apply only in a very limited number of cases or exceptional situations). Russia specified that this practice proved very effective.

Austria and France mention that procedural guarantees on human rights are already foreseen in applicable international treaties such as the ECHR, the European Convention on Extradition or bilateral treaties.

Italy, Iceland and Slovenia stated that, if there is any risk of an infringement of human rights, the extradition would not be granted.

Albania, Estonia, Lithuania and Poland stated that it is not possible, or feasible, to make extradition subject to certain conditions.

Poland and France drew attention to the unfeasibility of monitoring the respect of guarantees, as a sovereign State would not be willing to submit its criminal justice system to foreign scrutiny.

4. Does the granting of an extradition request lead to the revocation of asylum?

In the majority of the member States¹⁶, the granting of an extradition does not lead to the revocation of asylum or of the recognition of refugee status. Georgia, Poland and Russia stated that extradition would never be granted with respect to a refugee, while the legal grounds for granting refugee status are still valid.

Albania and Turkey replied that revocation of asylum is possible in such cases. Switzerland mentioned that the reasons for granting extradition might influence the decision on the revocation of asylum. Lithuania stated that if a person has been recognized by an effective court judgment guilty of commission of a grave crime, the refugee status will be withdrawn.

5. Does the fact that asylum was granted in your country entail a general prohibition to extradite a person, or is such prohibition limited to the State where the person fears persecution?

In 19 member States¹⁷, the prohibition to extradite is limited to the State(s) where the person fears persecution, or to a third State which may return the person to her/his country of origin (*double refoulement*)¹⁸.

Finland specified that if questions related to the applicability of the *non-refoulement* principle would arise in the context of extradition of a person who has been granted asylum, the immigration service has to be consulted.

Iceland replied that granting of asylum does not entail any prohibition to extradite.

¹⁵ Finland, France, Georgia, Germany, the Netherlands (not if an asylum application is pending) , Slovakia, Slovenia, Hungary, Russia, Sweden, Switzerland, Turkey.

¹⁶ Armenia, Austria, Estonia, Finland, France, Germany, Hungary, Iceland, Italy, Latvia, Lithuania, Norway, the Netherlands, Slovenia, Sweden.

¹⁷ Albania, Austria, Czech Republic, Estonia, France, Georgia, Germany, Hungary, Italy, Latvia, the Netherlands, Norway, Portugal, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland.

¹⁸ Albania, Czech Republic, France, Spain.

Lithuania, Poland, Romania and Turkey replied that the fact that asylum was granted entails a general prohibition to extradite a person, irrespective of the requesting State.

6. If the person sought has been granted asylum in your country and extradition has been refused, does the legislation of your country:

Estonia stated that it has no legislation dealing with the following 4 questions.

6.1 allow for the transfer of criminal proceedings?

In 21 member States¹⁹ transfer of criminal proceedings is possible if the person sought has been granted asylum and extradition has been refused. Poland specified that a prior decision on asylum has no impact on the possibility of such transfer.

Denmark mentions that this possibility only exists for offences which fall within the scope of the European Convention on the Transfer of Proceedings in Criminal Matters. Finland also stated that it applies Article 21 of this Convention, despite the fact that it has not ratified it. Sweden specifies transfer of criminal proceedings is possible on the condition that an offence has been committed according to Swedish criminal law and that Swedish courts have jurisdiction.

Georgia replied that this decision is made case by case.

Iceland, Italy and Lithuania do not allow for the transfer of criminal proceedings.

6.2 include an obligation for initiating criminal proceedings in accordance with the principle *aut dedere aut judicare* ?

In 12 member States²⁰ the principle of *aut dedere aut judicare* is applied. 9 other member States²¹ replied that there is no obligation to initiate criminal proceedings when extradition is not granted. Lithuania mentioned that there is an obligation to prosecute particular international offences specified in internal laws.

6.3 allow for the enforcement of a sentence or detention order issued by the requesting State?

18 member states²² do allow for the enforcement of a sentence or detention order issued by the requesting State. 9 of these member States²³ specified that this is under the condition that there is an international treaty in force.

Finland, Georgia (except for sentences against a Georgian national) and Lithuania replied the enforcement of a sentence issued by the requesting State is not allowed.

Italy specified that it has no legislation specifically dealing with enforcement of a sentence when extradition has been refused.

¹⁹ Albania, Armenia, Austria, Czech Republic, Denmark, Finland, France, Germany, Hungary, Latvia, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Sweden, Switzerland, Turkey.

²⁰ Albania, Armenia, Austria, Czech Republic, Germany (provided that German criminal law is applicable), the Netherlands, Poland, Romania, Slovakia, Slovenia, Sweden, Switzerland.

²¹ Denmark, Finland, France, Georgia, Hungary, Iceland, Italy, Latvia, Norway

²² Albania, Armenia, Austria, Czech Republic, Denmark, France, Germany, Hungary, Iceland, Latvia, the Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Sweden, Switzerland.

²³ Austria, Denmark, France, the Netherlands, Norway, Romania, Slovakia, Slovenia, Sweden.

6.4 consider requests concerning such persons as relating to political offences precluding any of the above solutions?

19 member States²⁴ do not necessarily preclude the above solutions, many of which specified that this will depend on the ground for refusal of the request for extradition and the circumstances of the case.

Switzerland, Germany and Denmark replied that if an offence is considered to be a political offence the above mentioned measures are precluded.

Armenia and Russia stated that their legislation does not define political offences.

7. What effect does the granting of asylum or international protection by a third State have on extradition procedures in your country?

11 member States²⁵ consider that the granting of refugee protection or another form of international protection by a third State is not binding in the extradition procedure, but this can have an indicative effect on the decision. France specified that it does recognize international protection given by EU member States or member States of the Dublin Convention.

5 responding States²⁶ replied that they have no legislation on this point. Another 5 States²⁷ replied that the granting of asylum or international protection by a third State would have no effect on the extradition procedures, and that the extradition request would be examined according to its own merits.

In Georgia, Hungary, Lithuania and Slovenia, if the third State is party to the UN Convention relating to the Status of Refugees, extradition will not take place. Hungary and Slovenia added that if the third State is not party to the Convention, the principle of *non-refoulement* will be applied.

Switzerland specified that, if international protection is granted by any third State, this person will not be extradited to his country of origin. Romania replied that on one occasion where this situation occurred, the person was not extradited to the State where he/she feared persecution.

8. What is the impact of existing solutions dealing with repeated requests for asylum following the refusal of the first request on the possibility of extraditing a person?

9 member States²⁸ consider that repeated requests for asylum do not significantly affect the extradition procedure. Switzerland referred to the fact that extradition can be carried out, if it was granted before the request for asylum.

Slovakia specifically referred to a recent amendment to its Code of Criminal Procedure, which allows the court to take a decision on extradition, provided that there was a final decision on the initial request for asylum.

7 States²⁹ specified that repeated requests for asylum are only admissible if there are new elements in the case.

²⁴ Albania, Austria, Czech Republic, Denmark, Finland, France, Georgia, Iceland, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Slovakia, Slovenia, Sweden, Switzerland.

²⁵ Austria, Czech Republic, France, Germany, Italy, Latvia, Norway, Poland, Russia, Slovakia, Sweden.

²⁶ Armenia, Czech Republic, Estonia, Iceland and Spain.

²⁷ Albania, Denmark, Finland, the Netherlands and Turkey.

²⁸ Armenia, Austria, France, Germany, Italy, Norway, Poland, Sweden and Switzerland.

Albania, Lithuania, the Netherlands and Portugal replied that a subsequent request for asylum will have the same impact on the extradition procedures as the initial request. Portugal added that, in a few cases, this may have a negative effect on the extradition procedure, in particular as far as lapse of time is concerned. Spain and Turkey also considered that the total length of the asylum procedures may cause delays for the extradition procedure.

Georgia specified that the impact would depend on each case.

Denmark, Estonia and Latvia have no experience with such cases.

In Finland, a decision on a “subsequent application” which does not contain any new grounds can be issued following an accelerated asylum procedure. Norway also stated that repeated requests for asylum are treated rapidly and do not have an impact on the request for extradition.

9. How does your country ensure co-ordination and exchange of information between the authorities responsible for asylum procedures and extradition procedures?

In reply to this question, Denmark, Italy, Latvia, and Slovakia mentioned that there are no rules on the coordination between the bodies responsible for extradition and asylum procedures.

21 member States³⁰ stated that some form of coordination between the different authorities responsible for extradition and asylum procedures exists. In many States, this co-ordination is of an informal nature. In some countries, the information often comes from the person in question or his lawyer (in Sweden, the person is even assigned a representative, who ensures the exchange of information between the two procedures).

Austria referred to a web-based information system, maintained by the Federal Asylum Office, which contains reliable information on the human rights situation worldwide and which is accessible by both the asylum authorities and the courts. In France, the judicial authorities cannot examine in detail the asylum file but can ask the Immigration service for information, whereas the Office responsible for asylum has full access to extradition decisions.

Germany replied that the coordination begins at the search stage; the federal criminal police office can transmit data from the central register for immigrants to the authorities, which will decide on the arrest for extradition. The public prosecution office will inform the Immigration office if this person has applied for asylum, and asks for relevant information.

10. Have you encountered any problems in this area?

19 member States³¹ have not encountered any problems in this area.

Austria replied that the coordination between the extradition and asylum proceedings is difficult and that it often fails. Slovakia considers that there is a lot of misuse of the asylum system in extradition proceedings. According to Slovakia, requests for asylum have been submitted only after the reception of an extradition request in many cases, and repeated requests for asylum, without new grounds, were submitted in order to prolong extradition proceedings. Russia raised the question of the lack of transparency of asylum procedures due to confidentiality, which do not allow the State requesting extradition to be informed of and

²⁹ Armenia, Czech Republic, France, Hungary, Latvia, Russia and Slovenia.

³⁰ Albania, Austria, Czech Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Romania, Russia, Slovenia, Spain, Sweden, Switzerland.

³¹ Albania, Armenia, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Hungary, Italy, Iceland, Latvia, Lithuania, Norway, the Netherlands, Portugal, Romania, Slovenia, Sweden.

react to allegations of persecution and which in Russia's opinion may hamper international co-operation in criminal matters.

France specified that a problem arises when a person obtains refugee status before an extradition request is submitted. This may lead to the withdrawal of the refugee status.

Switzerland raised the question whether a person who has been granted asylum has a right to be informed that she/he is sought for extradition purposes.

11. Do you think that new Council of Europe standards are desirable on the relationship between asylum proceedings and extradition procedures? Please state briefly reasons for your reply.

3 States³² were of the view that it was premature to have an opinion on this question, in part due to lack of practice.

11 member States³³ do not consider that new Council of Europe standards in this field would be useful or desirable. Georgia was of the view that UNHCR standards fully meet the needs of States. Switzerland specified that although the relationship between asylum and extradition procedures should be regulated at a national level, it is desirable to work on recommendations concerning, for example, which procedure (extradition or asylum) has priority or mutual recognition of decisions granting asylum. Russia considered that new standards could only worsen an already difficult situation.

Poland stated that this would depend on the concrete proposals to be considered,

9 States³⁴ were in favour of some future work by the Council of Europe on this subject. Austria and Slovakia replied that new Council of Europe standards are desirable as the necessary co-ordination between asylum and extradition procedures causes a lot of problems in practice and that the Council of Europe would be the right forum to address these problems. Slovakia particularly referred to the problem of unjustified repeated requests for asylum submitted by persons sought for extradition purposes. Albania also mentioned that Council of Europe standards are needed, as it is unclear what the implications are when asylum procedures start after the submission of a request for extradition.

Italy, Lithuania and Portugal replied that new Council of Europe standards could have an added value, notably as common guidelines regulating the relationship between the extradition and asylum procedures.

Norway, Finland and Romania were of the view that, taking into account the difficult discussions on this matter within the EU and diverging State practices, at least a study of the current framework and practice and further discussions on the relationship between asylum and extradition procedures would be desirable. Iceland was also of the view that the Council of Europe should further examine the relationship between extradition and asylum procedures, as they impose contradictory obligations on States (for example, the obligation to protect the identity and location of asylum seekers).

³² Czech Republic, Latvia and Slovenia.

³³ Denmark, Estonia, France, Georgia, Germany, Hungary, the Netherlands, Russia, Spain, Sweden and Switzerland.

³⁴ Albania, Austria, Finland, Iceland, Italy, Lithuania, Norway, Finland, Portugal and Slovakia.

APPENDIX VIII



Strasbourg, 27 April 2009

CDPC (2009) 08
English only

Directorate General of Human Rights and Legal Affairs
Criminal Law Division

Project Proposal

***Effective practical tools to
facilitate judicial cooperation in criminal matters***

Summary

This project aims to improve judicial cooperation in the criminal field between the member states, based on a more efficient implementation of the Council of Europe's conventions on international cooperation in criminal matters.

At present, the member states have very different requirements and conditions for granting legal assistance, and a requesting state frequently encounters difficulties accessing the correct information on the procedures and conditions necessary for the request to be dealt with in a successful and speedy manner. This seriously hinders the process of international cooperation in combating transnational crime.

The project will provide a concrete solution to these obstacles through the creation of information sheets and standard model request forms for each member state, taking account of their internal requirements and procedures for granting judicial cooperation in criminal matters.

The information sheets and model request forms will be hosted on a database set up on the Council of Europe's Internet site, permitting easy access for the competent authorities of one member state presenting a request for cooperation to another member state.

The result will be a useful tool strengthening international cooperation in the fight against transnational crime in Europe.

1. **Title:** Creation of standard model request forms to facilitate judicial cooperation in criminal matters
2. **Location:** Council of Europe member states; Strasbourg
3. **Duration of project:** 2009 - 2010 – duration 24 months
4. **Budget:** 413 500 €
5. **Overall objective:**
To facilitate and improve judicial cooperation in criminal matters between the member states of the Council of Europe
6. **Estimated results and deliverables:**
 - Information sheets created for each member state setting out the internal requirements and conditions for granting judicial cooperation in criminal matters.
 - Standard model request forms created for each member state.
 - A database on the Internet site of the Council of Europe hosting the information sheets and standard model request forms.
 - The guarantee of obtaining clear, reliable and immediately accessible information for practitioners and central authorities responsible for submitting requests for judicial cooperation in criminal matters and wishing to present a request to another member state.
 - Increased transparency concerning the internal requirements of member states in the area of presentation of requests for mutual assistance and information on the possible actions which could be taken in the requested state – consequently a greater “predictability” in obtaining cooperation and a better anticipation of the possible obstacles which could be encountered - and a rationalisation of the decision-making procedures.
 - Exchange of good practices between the member states.
 - Facilitation, simplification and acceleration in dealing with requests for judicial cooperation, increase in the level of satisfaction of requests for judicial cooperation, optimisation of the cooperation instruments and tools applicable between the member states.
7. **Partners:** The European Commission (Technical Assistance and Information Exchange - TAIEX), the European Judicial Network (EJN)
8. **Beneficiaries and stakeholders:** All Council of Europe member states and observer states
9. **Description and rationale of the project:**

The Council of Europe Conventions on co-operation in criminal matters, in particular those relating to extradition, mutual legal assistance and transfer of sentenced persons are among the most widely ratified conventions of the Council of Europe and continue to provide a pan-European framework for legal co-operation in the criminal field.

One of the main findings of the Reflection Group on developments in international co-operation in criminal matters (PC-S-NS) in its “New Start” report (2002) was that those involved in criminal co-operation must have simple tools to help them apply European rules and regulations, in particular standard forms (international requests for judicial assistance, models for the exchange of criminal records, requests for provisional arrest pending extradition, extradition requests, etc),

The importance of ensuring a better implementation of these legal instruments has also been reiterated on several occasions at the highest political level, notably at the 26th Conference of European Ministers of Justice (Helsinki, 7-8 April 2005, in particular Resolution No. 5 “on the functioning of the Council of Europe conventions on judicial co-operation in criminal matters”), the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, 16-17 May 2005) and the High level Conference of the Ministries of Justice and of the Interior (Moscow, 9-10 November 2006).

In accordance with the “New Start” report and the conclusions of these events, the Council of Europe’s priority has increasingly been the development of practical measures aiming at improving the application of existing standards in this field, rather than the elaboration of new standards.

In this context, the PC-OC (Committee of Experts on the operation of European Conventions on co-operation in criminal matters) launched, as a first step, a database on national procedures regarding extradition, mutual legal assistance and transfer of sentenced persons in 2008, as well as a network of single points of contact in the field of international co-operation in criminal matters.

This project will build on and improve the efficiency of existing tools, as well as allow the development of further practical measures improving the implementation of the Council of Europe standards in this field. These tools will create a further incentive for practitioners in member states to make full use of these standards, increase their visibility, contribute to improved cooperation between member states and ultimately strengthen the fight against transnational crime in Europe.

10. Project activities:

Activity 1

Preparatory work by three specialised experts, involving the collection of information on the requirements and procedural conditions in the different states and a report summarising the elements common to all states, existing good practices and proposals for draft model request forms. A one-day meeting of the experts in Strasbourg.

Activity 2

A launching conference with the participation of all the member states, observer states and the three experts to examine and discuss the report prepared by the experts and to decide the format of the models.

Activity 3

On-site visits to support member states with the creation of the models:

- For the member states of the European Union:
A number of models corresponding to the implementation of European Union instruments on criminal judicial cooperation have been developed by the EJM and are used for cooperation between the member states of the EU. In addition to these, models adapted to the Council of Europe instruments will have to be created (adaptation of existing models or creation of new models) with the support of the EJM.
- For the countries which are not members of the EU:
New models for requests for judicial cooperation in criminal matters will need to be created. Expert on-site visits to each of the countries concerned will be undertaken. These visits will involve meetings between the experts and the national authorities directly involved in international cooperation in criminal matters and are intended to support the creation of the models in the light of national legislation.

Activity 4

A final conference with the participation of all the member states, observer states and the experts in order to complete the models.

Activity 5

Creation of the website and database on the Internet site of the Council of Europe and placing the information sheets and standard models developed on-line for access by the member states’ competent authorities.

Activity 6

Follow-up and regular updating of the contents of the database.

11. Project timeline:

Activity 1	September 2009 – February 2010
Activity 2	March 2010
Activity 3	April 2010 - January 2011
Activity 4	February 2011
Activity 5	March-June 2011
Activity 6	Updating on an annual basis

12. Project management:

The overall responsibility for the project lies with the Criminal Law Division, Law Reform Department, Directorate General of Human Rights and Legal Affairs. The project will be implemented in the framework of the programme *Monitoring the operation of conventions on cooperation in the criminal field*, under the close supervision of the PC-OC (Committee of Experts on the operation of European Conventions on co-operation in criminal matters) and the CDPC (European Committee on Crime Problems).

The on-site visits will be conducted by 2 experts from the member states with one staff member of the Council of Europe.

The construction of the database to host the relevant information and standard forms for each member state will be entrusted to consultants, in cooperation with the Directorate of Information Technology (DIT).

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APPENDIX IX



Strasbourg, 24 September 2009
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CDPC-BU(2009)09

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Bureau
(CDPC-BU)

Strasbourg, 14-15 September 2009

ELEMENTS FOR DISCUSSION

SCIENTIFIC PROOF IN THE PENAL FIELD

Agora
Room G05

Scientific proof in the criminal field

Elements for discussion

Introduction

1. Expert witnesses play an increasingly important role in national and international criminal proceedings. Although they are not entitled to express opinions on the legal questions, their involvement in investigation and prosecution is becoming increasingly important as scientific progress opens new prospects for the processing of criminal cases. So far no legal instrument exists which provides common standards for the status and the role of the expert in national criminal proceedings and in the field of international cooperation. Indeed, each country has drawn up its own standards, thus making the use of evidence very difficult at the international level. Furthermore, new methods of investigation require better qualified experts, as well as significant material resources, which may not be available at the national level.

2. Hence, on the basis of some elements of reflexion notably worked out in the framework of the European Union, the Bureau of the CDPC, the steering committee responsible for crime policy in the Council of Europe, examined the issue of scientific proof in criminal matters during its last two meetings. It instructed the Secretariat, in close collaboration with Mr. RUELLE (France), to prepare further elements for discussion establishing the different elements and possible guidelines that could be developed on this subject.

3. The CDPC is indeed in a unique position to look into the issue and to propose relevant actions. The following elements should be considered in any future work undertaken by the Committee on this topic:

The experts:

a. Status of the expert

1. As regards the experts, it appears that in most countries principles of proportionality are applied balancing the means used and the seriousness of the offence. Indeed, the police are usually trained in basic sampling techniques for minor offences, while specialists will be called in for complex or serious cases.

2. However the status of the expert in the national system has not been studied so far at the level of the Council of Europe or the European Union. The collection and analysis of the various solutions found in the national legal systems of the Council of Europe Member States should be a starting point for any action in this field. Who can be appointed as an expert? What are the conditions prescribed by the national legislation? Is there any registration procedure? These are the basic questions which need to be posed in order to understand and harmonise the status of the expert in the Member States.

b. Status of the laboratories

1. As regards the status of the laboratories, this varies according to the type of analysis. The analysis laboratories are accredited. The accreditation relates primarily to the processes used. In many States, the laboratories must obtain an approval or a certification from an authorized body (in particular the standard ISO 17025).

2. This allows States to trust the quality of the information and data resulting from the analysis carried out by other States, and thus enhances legal cooperation in criminal matters.

c. Expert bodies/authorities

1. Even if States often have recourse to outside contributors, such as independent experts, universities or laboratories abroad by means of bilateral agreements, there is still a pre-eminent use of governmental laboratories.
2. For the time being there are certain areas of expertise which are monopolized by the States. In some cases this approach may well be justified, however the issue may require further analysis.

The proceedings:

d. The role of the expert in the course of criminal proceedings

Criminal trials rely increasingly on scientific evidence. Scientific expertise can either be requested by the parties, or be furnished ex officio. Any future exercise in this field should therefore take into account how the experts become involved in the criminal proceedings. Is it the right/obligation of police, prosecutor and/or the court to appoint an expert? Does the defence have an equal right to ask for the appointment of an expert in general or if it disagrees with the expert appointed by one of the authorities mentioned above. If it is possible to appoint/request the appointment of an expert by the defence, who would then bear the costs of the expertise?

e. The impact of the expert's opinion on the procedure

1. The legal strength of the scientific proof is not absolute: while it constitutes a major element in the criminal trial on which judges rely, it is still an element subject to the discretionary appreciation of the latter.
2. The possibility of taking into account scientific proof varies from one country to another. Indeed, in certain countries, this possibility differs according to the various stages of the procedure. In others, this possibility is much wider and includes also the investigation phase, where the defence may engage a scientific expert to analyse the results of the laboratory tests or carry out an independent analysis.
3. The expert usually provides his/her reasoned opinion on particular issues and/or questions requested by the authority which appointed the expert. In most cases experts are not allowed to comment on the legal aspects of the case, which are left for the judge to decide upon. However, the precise situation in Member States is not clear concerning the issue. The issue may also be linked to the standards which laboratories should meet.

f. Equality of arms

In any event, scientific proof has to be examined in court while respecting the adversarial principle. The expert has to remain as neutral as possible so that the balance between prosecution and defence in the proceedings is respected. This also implies that it is in the interest of justice that the cost of the expertise should not constitute an obstacle preventing the defence from appointing, if necessary, an independent expert.

International cooperation:**g. Improvement of trust among Member States to enhance international cooperation**

1. Understanding the role of experts, as well as that of laboratories, in domestic systems would contribute to improving trust among Member States.
2. The role of the expert is important not only at the national level. It has also an impact on mutual trust between legal systems in the area of judicial cooperation. The most visible example is provided by the 1972 Council of Europe Convention on transfer of criminal proceedings according to which the requested State should, in principle, accept the evidence from the requesting State, including any expert opinion. Therefore the status and the role of the expert play an important role in the field of an international cooperation.

h. Possibility for the use of experts from another Member State

1. Increasingly, Europe is becoming an area without borders, with an international judicial space, a dream of lawyers many years ago, turning into reality. Should this reality provide for a possibility to use an expert from another Member State?
2. Furthermore, the new tools in the field of mutual legal assistance provide for the possibility of undertaking an expertise directly in the requested State. Such mechanisms also raise a series of questions.

Scientific progress:**i. Expertise concerning new Technologies and new methods of forensic science**

1. The development in new technologies opens new territories for experts and for criminal proceedings. This area should be further examined.
2. Particular attention should be paid to important new questions raised by new methods of forensic science. Some commentators refer to a “second generation” of scientific evidence (including techniques such as DNA typing, data mining, biometric scanning or functional MRI imaging), as opposed to first generation forensic techniques (such as analysis of fingerprints, handwriting, hair and fibre, ballistics or blood typing).
3. The second generation techniques generally require a much higher degree of specialisation, together with often very complex and expensive machinery, as well as the application of sophisticated scientific concepts. Thus, the traditional remedies for ensuring reliability, such as better resources for the defence and reliance on the adversarial procedure, might not yield optimum results for such new methods. Firstly, the costs relating to new independent analyses could be prohibitively high, and given the high level of reliability of these methods (even though they are not infallible), the new analysis would actually be unnecessary or wasteful in some cases. Secondly, the methodology used for such scientific evidence relies on very large databases and sophisticated statistical techniques, which might make it impossible to detect problems in the context of an individual case. In addition, the data may be inaccessible to the defence for different reasons, such as intellectual property rights (of private companies having developed such techniques) or data protection (e.g. for databases of stored genetic profiles).
4. These difficulties might call for novel approaches, such as the encouragement of more open, critical and independent scientific research on the reliability of these methods, in collaboration with the entities controlling the data (the governments or private companies). The results of scientific research, including conflicts of opinion in the scientific community, could then be reviewed by panels of independent experts, set up at the national or international level, which could give opinions on the scientific and legal implications of advanced forensic techniques, with a view to providing useful elements of a general nature to judges, prosecutors and defence lawyers.

Proposals:

1. The area of scientific proof is evolving. The CDPC provides a forum for in-depth consideration of the legal issues involved. As a first step information about the legal situation in this field in the Member States should be collected. This exercise could be followed by a feasibility study carried out either through the Secretariat or with the assistance of an external expert. Only after obtaining a comprehensive overview on the functioning of the systems and possible problems which may arise from the different solutions adopted in the Member States, including problems raised in the field of international legal cooperation, the CDPC could take a decision on possible further steps.

2. However it should be underlined that no legal instrument on this subject currently exists. It seems appropriate to consider close cooperation with the European Union, which has already initiated work in this area. Within the framework of the construction of a European legal space, the EU plans to draw up a "European code of conduct" concerning scientific experts. A joint effort would avoid duplication of work, produce transparent results and provide a greater legal strength to criminal proceedings.

APPENDIX X



19 June 2009

MJU-29 (2009) RESOL. 1 E

29th COUNCIL OF EUROPE CONFERENCE OF MINISTERS OF JUSTICE

(Tromsø, Norway, 18 -19 June 2009)

**RESOLUTION No. 1
on preventing and responding to domestic violence**

THE MINISTERS participating in the 29th Conference of the Council of Europe Ministers of Justice (Tromsø, Norway, 18 -19 June 2009),

1. Welcoming the report of the Minister of Justice of Norway on “Breaking the silence - united against domestic violence” and the contributions made by other delegations;
2. Recalling the Committee of Ministers’ recommendations Rec (2002) 5 on the protection of women against violence and Rec (2006) 8 on assistance to crime victims;
3. Having discussed the problems and possible solutions related to domestic violence;
4. Recognising that domestic violence is still widespread in European societies and that there is an urgent need to combat this phenomenon and its negative consequences for all victims, in particular women and children;
5. Recognising that domestic violence mainly affects women and deserves integral and efficient answers including the promotion of de jure and de facto equality between women and men;
6. Recognising that domestic violence seriously violates and impairs the enjoyment of human rights and fundamental freedoms;
7. Recalling that states have a positive obligation to secure the enjoyment of human rights, in particular to protect the life and the physical and psychological integrity of every person, including in the sphere of the relations of individuals between themselves, while ensuring respect for private and family life as guaranteed by Article 8 of the European Convention on Human Rights;
8. Recognising the continuing necessity to take adequate preventive measures and provide effective remedies to potential victims of domestic violence;
9. Recognising that there exist forms of domestic violence, in particular against children and the elderly, which are insufficiently known and considered;

10. Recognising the need for increased protection and support for particularly vulnerable categories of victims of domestic violence;
11. Welcoming the Council of Europe Campaign to Combat Violence Against Women Including Domestic Violence;
12. Expressing their support for the work of the Ad Hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO);
13. Recalling Resolution No.1 on victims of crime adopted at the 27th Conference of European Ministers of Justice in Yerevan (12-13 October 2006) and its follow up;
14. Mindful of the need to respect both the rights of victims and those of alleged offenders in the investigation and the criminal proceedings, in full respect of the European Convention on Human Rights;
15. Emphasising that special attention should be paid to the status and the rights of victims in criminal proceedings when preparing relevant future Council of Europe criminal law conventions:

* * *

16. AGREE that there is a need to secure a safe environment for victims who have suffered domestic violence and to ensure appropriate assistance and remedies for them;
17. RECOGNISE that there is an urgent need not only to prosecute and punish perpetrators of domestic violence, but also to ensure that in particular those responsible for serious and repeated acts of domestic violence are offered treatment aiming at preventing re-offending;
18. UNDERLINE the importance of providing an appropriate legal framework, not limited to criminal law, and practical measures for assisting and protecting victims of domestic violence;
19. AGREE that state authorities should pay particular attention to the prevention of secondary victimisation;
20. UNDERLINE the importance of ensuring special training for professionals dealing with domestic violence, in particular judges and prosecutors, members of the police and the medical and social services;
21. INVITE the Committee of Ministers to promote existing standards and work of the Council of Europe by informing victims of domestic violence not only of the available criminal but also the civil and administrative remedies, to ensure that they receive sufficient protection;
22. INVITE the Committee of Ministers to entrust the European Committee on Crime Problems (CDPC), in cooperation with the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for Human Rights (CDDH), to examine the following objectives to be taken into account for inclusion in common rules related to the status and rights of victims in criminal proceedings:
 - a. ensuring, throughout the criminal justice process, respect for the personal situation, rights and dignity of victims and protection against any intimidation, harassment or abuse;
 - b. recognising and improving the status of victims in the investigation and the criminal proceedings;
 - c. ensuring effective access to justice by the provision of information, legal advice and, where appropriate, legal aid;
 - d. ensuring specific assistance and protection to the most vulnerable victims;

- e. in cases where it is decided not to prosecute an alleged offender, considering ways for victims to have the decision re-examined;
 - f. providing for compensation schemes, including expenses incurred in relation to criminal proceedings;
23. INVITE the Committee of Ministers to entrust the European Committee on Crime Problems (CDPC), in co-operation with other competent bodies of the Council of Europe, to examine existing best practices in member states, in full respect of human rights, related to:
- a. the assessment of the risk of re-offending and the danger to victims and society posed by perpetrators of acts of domestic violence;
 - b. the supervision and treatment of such perpetrators in serious and repeated cases, in closed settings and in the community, including surveillance techniques;
 - c. programmes and measures aimed at helping perpetrators improve self-control and behaviour-management and, where possible, repairing the harm done to victims;
24. INVITE the Committee of Ministers to entrust the European Committee on Legal Co-operation (CDCJ), in co-operation with the European Committee on Crime Problems (CDPC), the Steering Committee for Human Rights (CDDH) and the Steering Committee for Equality between Women and Men (CDEG), in the light of the results of the work by the *Ad Hoc* Committee on preventing and combating violence against women and domestic violence (CAHVIO), to examine, taking into account the need to protect both the rights of victims and those of perpetrators:
- a. forms of domestic violence directed in particular against children and the elderly, and propose responses to them;
 - b. challenges faced by victims of domestic violence and propose targeted solutions to increase their protection and reduce their vulnerability;
 - c. the effectiveness of existing civil and administrative legal remedies and measures and propose further ones aimed at preventing domestic violence or responding to it;
25. ASK the Secretary General of the Council of Europe to present a report on the steps taken to give effect to this Resolution on the occasion of their next Conference.

APPENDIX XI



19 June 2009

MJU-29 (2009) RESOL. 2 E

29th COUNCIL OF EUROPE CONFERENCE OF MINISTERS OF JUSTICE

(Tromsø, Norway, 18 -19 June 2009)

**RESOLUTION No. 2
on mutual assistance in criminal matters**

THE MINISTERS participating in the 29th Council of Europe Conference of the Ministers of Justice (Tromsø, Norway, 18 -19 June 2009),

1. Recalling Resolution No. 5 on the functioning of the Council of Europe Conventions on judicial co-operation in criminal matters adopted in Helsinki (7-8 April 2005);
2. Having regard to the Conclusions adopted at the High Level Conference of the Ministries of Justice and of the Interior in Moscow (9-10 November 2006);
3. Convinced that one of the key roles of the Council of Europe is to assist its member States in strengthening their individual and collective ability to prevent and respond to crime, while respecting human rights;
4. Recognising the value of the existing 31 treaties of the Council of Europe dealing with various aspects of co-operation in criminal matters;
5. Welcoming the close co-operation between the Council of Europe and the European Union based on common standards as embodied in these treaties and the Memorandum of Understanding between the two organisations, and as recently expressed in the Conclusions of the Council of the European Union on supporting the Council of Europe's legislative work in the area of criminal justice (26-27 February 2009);
6. Marking the 50th anniversary of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and welcoming the fact that this Convention has been ratified by all member States of the Council of Europe and by Israel;
7. Bearing in mind that this convention has been of particular relevance in setting up Europe-wide co-operation mechanisms and thus establishing the preconditions for prosecuting different forms of trans-border criminality;

8. Noting that the evolution of criminality towards a growing trans-border phenomenon has led to the need to update the existing instruments and to the adoption of the two additional protocols to the European Convention on Assistance in Criminal Matters in 1978 and 2001;
9. Considering that the 2nd Additional Protocol of 8 November 2001 in particular adapts the European Convention on Mutual Assistance in Criminal Matters to today's needs, by providing for novel channels and means of co-operation, by facilitating assistance and making it quicker and more flexible;
10. Welcoming the steady stream of ratifications of the convention and its additional protocols which attests to the fact that they remain a living document, continuing to be applied on a daily basis and providing a legal basis for effective co-operation between their Parties;
11. Noting with appreciation the work of the European Committee on Crime Problems (CDPC) and its subordinate committees in the adoption and updating of the relevant Council of Europe instruments, as well as in maintaining a continued scrutiny on the effective operation of the conventions on co-operation in criminal matters;
12. Welcoming in particular the recent implementation by the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) of measures to facilitate the practical application of the Council of Europe conventions on co-operation in criminal matters;
13. CALL ON member States:
 - a. if they have not already done so, to sign and ratify the 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters as a matter of priority;
 - b. to review their reservations to the European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols, with a view to withdrawing them if possible, in order to remove all obstacles to international co-operation;
14. AGREE on the need to further develop practical measures in order to render international co-operation in criminal matters more effective all over Europe;
15. INVITE the Council of Europe to strengthen its activities aimed at developing and enhancing such measures, in particular by intensifying the co-operation between the relevant bodies of the Council of Europe and the European Union, and in particular the PC-OC and the European Judicial Network;
16. INVITE member States to support initiatives in this field and offer their co-operation in order to make them effective.

APPENDIX XII



19 June 2009

MJU-29 (2009) RESOL. 3 E

29th COUNCIL OF EUROPE CONFERENCE OF MINISTERS OF JUSTICE

(Tromsø, Norway, 18 -19 June 2009)

RESOLUTION No. 3 on Council of Europe action to promote the rule of law

THE MINISTERS participating in the 29th Council of Europe Conference of Ministers of Justice (Tromsø, Norway, 18-19 June 2009),

1. Reaffirming the importance of the rule of law as a basis of genuine democracy;
2. Recalling that it is the core objective of the Council of Europe to preserve, strengthen and promote the rule of law, human rights and democracy;
3. Referring to the three Declarations of the Heads of State and Government of the member states of the Council of Europe made on the occasions of the Council of Europe Summits of Vienna (1993), Strasbourg (1997) and Warsaw (2005) expressing their attachment and commitment to the rule of law;
4. Recognising that fair, efficient and accessible judicial systems are essential elements of the rule of law;
5. Acknowledging with appreciation the initiative taken in 2008 by the Swedish Chairmanship of the Committee of Ministers of the Council of Europe to make better use of the Council of Europe's potential in enhancing the rule of law, and referring to the document "The Council of Europe and the rule of law" (CM (2008) 170 of 21 November 2008) which has been prepared in this context;
6. Recognising the outstanding and essential contribution of the European Convention on Human Rights, the European Court of Human Rights and the Committee of Ministers, as supervisor of the execution of the Court's judgments, to developing and upholding common European rule of law standards and principles in all member states;
7. Noting that the rule of law should be ensured in international relations as well as within states;
8. Recognising also the role of the other Council of Europe mechanisms in the human rights and legal fields in monitoring and reinforcing the rule of law in the member states;

9. Convinced of the need to propose concrete steps in order to enhance the Council of Europe's capacity to actively promote the rule of law in all member states through existing as well as new standards and their effective implementation, as well as to develop needs assessment based co-operation programmes;
10. Recognising that the variety of rule of law-related activities of the Council of Europe, both in nature and topic, call for closer coordination between its different sectors as well as the use of synergies with other international organisations;
11. Stressing the importance of assessing, on a more comprehensive and regular basis, the state of the rule of law in the member states in order to adopt or develop Council of Europe standards and/or assist member states in addressing specific issues through targeted technical cooperation;
12. Underlining the importance of the Memorandum of Understanding between the Council of Europe and the European Union of 11 May 2007, which called for closer cooperation, in particular regarding the promotion and protection of the rule of law with a view to establishing common standards and promoting a Europe without dividing lines;
13. Convinced of the need to effectively implement legal standards of the Council of Europe and to further strengthen the Council of Europe's potential as the only pan-European standard-setting organisation:

14. REITERATE their support for action, at all levels and in all sectors of the Council of Europe, in pursuance of the core objective of the Organisation: the preservation, strengthening and promotion of the rule of law in all member states;
15. INVITE the Committee of Ministers:
 - a. to instruct the Secretary General to enhance coordination of the Council of Europe's activities regarding the rule of law;
 - b. to make better use of the existing bodies, while avoiding duplication with existing evaluation mechanisms, with a view to permitting a regular review in member states of the different aspects defining a state governed by the rule of law, as identified in the above-mentioned document "The Council of Europe and the rule of Law - an overview", notably on the basis of the case law of the European Court of Human Rights, the execution of its judgments, contributions by the relevant steering committees and advisory bodies as well as the findings of monitoring bodies;
 - c. on this basis, to target better technical co-operation and the development of standards;
16. INVITE the Committee of Ministers to consider measures to strengthen international co-operation between states in administrative matters, while providing adequate safeguards for the rights of individuals and their privacy, including an examination of existing Council of Europe conventions in this field with a view to reviewing them if necessary;
17. INVITE the Committee of Ministers to give high priority and adequate resources to rule of law-related activities in the civil, penal and administrative fields within the Council of Europe;
18. CALL ON the Council of Europe to intensify its rule of law-related activities and invite the European Union to cooperate with it in this work, with a view to ensuring coherence, synergies and the best possible use of available resources, notably in the context of existing or possible future rule of law assessment activities;
19. RECOMMEND that the Council of Europe pursues its work of promoting the rule of law worldwide by developing co-operation with the United Nations, the OSCE/ODIHR and other international institutions working in this field and by increasing the global reach of relevant Council of Europe conventions, such as:

- the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108, 1981) and its Additional Protocol regarding supervisory authorities and transborder data flows (CETS No. 181, 2001);
- the Convention on Cybercrime (CETS No. 185, 2001) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No. 189, 2003);
- the Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), and
- the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007).

APPENDIX XIII



Strasbourg, 16 October 2009
cdpc/docs 2009/cdpc (2009) 12 - e

CDPC (2009) 12

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

**OPINION OF THE EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)
ON PARLIAMENTARY ASSEMBLY RECOMMENDATION 1881 (2009) ON
THE URGENT NEED TO COMBAT SO-CALLED "HONOUR CRIMES"**

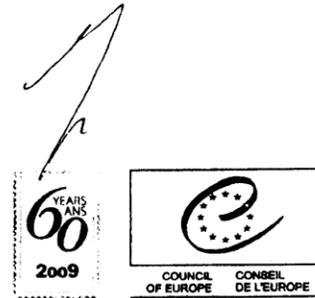
Secretariat memorandum prepared by
the Directorate General of Human Rights and Legal Affairs (DGHL)

1. Following the adoption by the Parliamentary Assembly of Recommendation 1881 (2009) on the urgent need to combat so-called “honour crimes”, the Committee of Ministers decided to communicate it to the European Committee on Crime Problems (CDPC), for information and/or possible comments. The CDPC examined the above Recommendation and decided to contribute to the response of the Committee of Ministers by providing the following comments concerning matters within its fields of competence.
2. The CDPC welcomed the initiative of the Parliamentary Assembly for the Committee of Ministers to devise a comprehensive strategy to put a stop to so-called “honour crimes”, based on the fundamental principles of gender equality and respect for human rights, and supported the Assembly’s invitation to the Committee of Ministers to include the fight against the most severe and most widespread forms of violence against women in its assistance and co-operation programmes.
3. As regards the specific criminal law aspects, the CDPC noted that Recommendation 1881 (2009) referred to a strategy based on the elimination of every form of legislative justification for diminishing or removing the criminal responsibility of the perpetrators of “honour crimes”. The CDPC fully supported this approach, and believed that custom, religion, tradition or honour may not be considered to justify acts of violence against women.
4. Furthermore, Parliamentary Assembly Resolution 1681 (2009), to which its Recommendation 1881 (2009) refers, asked national parliaments of Council of Europe member states to pass legislation to make so-called “honour crimes” offences either by creating a specific offence or by making provision for penalties to be aggravated. The CDPC was of the opinion that member states should adopt, according to their national legal systems, the necessary legislative or other measures to ensure that any form of violence committed in the name of honour is criminalised and punishable by effective, proportionate and dissuasive sanctions, taking into account its seriousness.
5. In this respect, the CDPC wished to recall the on-going work of the Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO), which is drafting a convention on the subject. According to CAHVIO’s Interim Report adopted by the Committee of Ministers on 1 July 2009, “crimes committed in the name of honour” form part of the conduct that should be covered by the draft convention.
6. In its Resolution 1681 (2009), the Parliamentary Assembly also requested member states to protect and support victims and potential victims of “honour crimes”. The CDPC recalled that the above-mentioned Interim Report stated that the draft convention being drawn up by CAHVIO would contain a chapter on protection and support of victims, including the establishment of support services such as telephone helplines, shelters, and emergency centres.
7. Moreover, as a follow-up to Resolution No. 1 adopted at the 29th Council of Europe Conference of Ministers of Justice (18-19 June 2009, Tromsø, Norway) on preventing and responding to domestic violence, which includes crimes committed in the name of honour, the CDPC wished to inform the Assembly that it will initiate work on the status and rights of victims in criminal proceedings with a view to granting them status in criminal cases. At its 2009 plenary meeting (12-16 October) the CDPC approved a proposal for an expert to carry out a preliminary report/study on this subject.
8. In view of the above, the CDPC was of the opinion that the standard-setting work already in progress on the subject will sufficiently address the criminal law and criminal procedural law questions within its competence which arise in relation to so-called “honour crimes”.

APPENDIX XIV

DG - HL 3 0 OCT. 2009 n° d'enregistrement

**Directorate of Legal Advice
and Public International Law (Jurisconsult)
Legal Advice Department and Treaty Office**



MEMORANDUM

<pf/dlapil/cj/avis 2/DGHL/Activités normatives/Steering Committees
or other subordinate bodies in CoE>
Jdir.102/2009
BTOL/cd

29 October 2009

For the attention of Jan KLEIJSSSEN
Director, Directorate of Standard-Setting, DGHL
 u/c Mr Paul DEWAGUET
 u/c Mr Manuel LEZERTU

Subject: Request for legal opinion concerning reference to Steering Committees or other subordinate bodies in Council of Europe Conventions

I refer to your request for a legal opinion concerning the reference to Steering Committees or other subordinate bodies in Council of Europe Conventions.

While it is true that, in the past, the European Committee on Crime Problems (the CDPC) has been specifically referred to in a number of Conventions, in particular those regarding legal co-operation in the criminal field, this was done prior to the adoption of Resolution (2005) 47 which specifically provides that the mandates of all committees, even Steering Committees, should be limited in time and their mandates be regularly reviewed. Indeed, prior to the adoption of Resolution (2005) 47, the CDPC was considered to be one of the Council of Europe's "permanent" committees and, I understand that at one time it was even an independent Committee (i.e. not subject to the Committee of Ministers). It was thus logical that the CDPC should be referred to explicitly in the "old" conventions and it would be very complicated, at this stage, to modify those references.

However, given the modifications brought about by Resolution (2005) 47, it would now seem appropriate that a Convention which is, in theory, unlimited in time, should not include references to Steering Committees and, even less to any subordinate bodies or indeed, to any specific sector of the Secretariat of the Council.

The only exceptions, therefore, would be the statutory bodies of the Council of Europe; i.e. the Committee of Ministers, the Parliamentary Assembly and the Secretary General.

Where conventions providing for conventional committees are concerned, it would seem more logical to leave it within the prerogative of the Committee of the Parties to decide which (existing) bodies they wish to involve in meetings or even as advisors or dispute

settlers. In this manner, should the chosen body cease to exist the Committee of the Parties can select a replacement. This is also important in that, as regards a monitoring convention of this type, it should be up to the States which are bound by it to make these decisions.

In respect of other new Conventions, such as the Additional Protocol to the Extradition Convention, it would be preferable that the Committee of Ministers be required to nominate any body responsible for, for example, the settlement of disputes. Obviously, as at present, that body would logically be the CDPC. Should the CDPC cease to exist, another body would then have to be nominated by the Committee of Ministers.

As an example, the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, CETS No.: 199 (the "Faro convention"), provides, in its Article 16, that:

"The Committee of Ministers, pursuant to Article 17 of the Statute of the Council of Europe, shall nominate an appropriate committee or specify an existing committee to monitor the application of the Convention, which will be authorised to make rules for the conduct of its business;"

In conclusion, then, this would be the preferable model to apply in respect of any new Conventions in the current legal context of Resolution (2005) 47, notwithstanding the CDPC's longstanding and solid reputation.


Bridget T. O'LOUGHLIN
Deputy Head of the Legal Advice Department

Cc: Philippe Boillat,
Jeroen Schokkenbroek,
Jörg Polakiewicz,
Carlo Chiaromonte,
Elise Cornu