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EUROPEAN COMMITTEE ON CRIME PROBLEMS

COMITE EUROPEEN POUR LES PROBLEMES CRIMINELS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS

COMITE D'EXPERTS
SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPEENNES
SUR LA COOPERATION DANS LE DOMAINE PENAL
(PC-OC)

**PC-OC Guidelines on the provision of information regarding the detention or other
measures of restriction imposed in extradition proceedings**

Adopted by the PC-OC at its 75th Meeting

Introduction:

The efficient application of the European Convention on Extradition requires a requested Party to enable the surrender of the person sought to the requesting Party, either for the purpose of prosecution or execution of a sentence, as soon as the final decision to extradite has been made. Under the European Convention on Extradition as well as established case law of the European Court of Human Rights (in particular Articles 5§1 f and 5§4 of the European Convention on Human Rights) and in other international and domestic courts, the detention for the purpose of extradition is the rule; a release even under conditions or on bail is the exception.

To this end, co-operation is most effective when requested Parties ensure that as soon as a request for provisional arrest or extradition has been received, during the extradition process and until surrender, detention or other measures of restriction imposed are adequate and sufficient. The PC-OC underlines that detention or alternative means of restriction only serve to ensure the presence of the person sought during the extradition proceedings and to enable his or her surrender to the requesting Party.

Factors such as appeals, potential parallel domestic prosecution(s), parallel requests, parallel asylum proceedings, the application of the *Petruhhin judgment* etc. tend to increase the duration of extradition proceedings, therefore maintaining the person sought in detention may become problematic in some jurisdictions.

Consequently, the use of alternatives to detention is becoming increasingly important. The Committee agreed that a combination of measures of restriction is probably the most efficient way to avoid escape. Such measures may include, among others: bail, house arrest, electronic monitoring, travel ban, handing over of the passport and the obligation to report regularly to law enforcement authorities.

The PC-OC considered that it would be useful to provide guidelines on the provision of timely information to the Parties requesting extradition on the detention or other measures of restriction imposed on the person sought. Such information might also help to inform victims and organise their protection when necessary.

The guidelines are intended to be as practical as possible, avoiding an unnecessary burden on the requested Party. It should be added that, as a principle, it is the requesting Party's responsibility to follow the progress of their own extradition request.

For the purpose of these guidelines, the term 'detention' is to be understood as holding a person in custody at any stage of the extradition proceedings until surrender. These guidelines apply to alternative measures of restriction during the same time-frame.

There is no practical need to inform the requesting Party of every application the person makes for provisional or conditional release, when such an application is from the onset

deemed meritless, or when the outcome of such an application is negative in the first place. Also, there is no use informing the requesting Party about the outcome of such an application when there is an appeal filed.

As a basic rule, absconding and the outcome of *final* decisions that have an impact on the situation of the person sought, should be communicated immediately by the requested Party.

The national legislation in some countries limits the duration of extradition detention. In such cases it is important to inform the requesting Party, well in advance, of the date of mandatory release.

The purpose of these guidelines is to improve the communication between the requested and the requesting Party on the subject of detention in a timely manner throughout the extradition proceedings.

Guidelines:

1. All Parties to the European Convention on Extradition are invited to complete and update the country information on extradition published on the website of the PC-OC. This should include in particular information on their national legislation and practice as regards detention and other measures of restriction.

2. Requesting Parties are invited to:

A. provide the requested Party with all relevant information on the person sought at the earliest stage possible, in particular factors increasing the risk of escape (such as earlier occasions where the person sought has absconded, precedents of abuse of provisional release and / or bail) so as to enable the competent authorities of the requested Party to take these into account when considering possible measures of restriction to be taken;

B. inform the requested Party as soon as possible on any legal or practical time limits concerning the validity of arrest warrants or convictions, that are at the basis of the extradition request and, accordingly, of the withdrawal of (the) extradition request(s).

3. Requested Parties are invited to:

A. inform the requesting Party as soon as possible, throughout the extradition proceedings, of any relevant change of the detention situation of the person sought. This applies in particular when the person sought is released (under certain conditions and / or on bail), has absconded after his / her release (despite conditions and / or bail) during

the extradition process. Informing the requesting Party is also recommended in case of the re-arrest of the person sought;

B. provide the requesting Party with information about a change of the legal basis for the detention. This is relevant, for example, when the person sought is already in detention for domestic purposes or, conversely, when the person sought is detained for the purpose of extradition and is subsequently in detention for domestic purposes. This information allows the requesting Party to consider the application of Article 19 of the European Convention on Extradition. In addition, this information will affect the calculation of the duration of the detention for the purpose of extradition.