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HIGH-LEVEL CONFERENCE
OF THE MINISTRIES OF JUSTICE AND
OF THE INTERIOR

Moscow (Russian Federation)

9 − 10 November 2006

IMPROVING EUROPEAN CO-OPERATION IN THE CRIMINAL JUSTICE FIELD

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Session 1: TOWARDS AN IMPROVEMENT OF THE EFFICIENCY OF THE OPERATION OF THE EUROPEAN CONVENTIONS ON JUDICIAL CO-OPERATION IN CRIMINAL MATTERS: THE NEED TO MODERNISE THE EUROPEAN MECHANISMS ON EXTRADITION AND ON MUTUAL ASSIST ANCE

The importance of judicial cooperation in criminal matters is today, in a world with less borders and more mobility, increasing. The Council of Europe has in the past been one of the leading actors in the area of judicial cooperation in criminal matters. Its documents represent the basis for the work in this area and are generally well accepted among Council of Europe member states and wider.

The European Convention on Extradition of 13.12.1957, with 47 states parties to it, sets standards for extradition that were accepted by all member states of Council of Europe and three non-member states. The first and the second additional protocol to this convention are with its 37 and 40 states parties respectively only a slightly lesser success. The European Convention on the Suppression of Terrorism of 27.1.1977 has been ratified by all but two member states. It has brought a significant derogation from the political offence exception for terrorist offences. But do these documents still fulfil the needs of member states to fight against crime in today's world? Or better - are we ready to improve them by introducing new standards?

The European Union has over the last eleven years added to the system of extradition, as it was established by the Council of Europe, a number of innovations leading finally to the European Arrest Warrant.

The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on simplified extradition procedure between the Member States of the European Union (1995 Convention) has introduced a new concept to the speciality principle and in that connection also set some deadlines for surrender. As to the speciality principle, member states to the convention have the possibility to declare, in accordance with their national legislation, that consent of the person to extradition automatically entails renunciation of entitlement to the speciality rule or that the speciality rule will not apply where the person expressly and clearly renounces his or her entitlement to the speciality rule. The consent and, where appropriate, renunciation, must be given voluntarily and in awareness of the consequences, with the right to legal counsel, before a judicial authority. Both possibilities offered by the 1995 Convention significantly shorten possible further procedures with regard to offences committed by that person before his/her extradition and at the same time give sufficient regard to the human rights protection. The 1995 Convention introduced also the first deadlines for surrender taking place after the simplified extradition procedure.

The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union (1996 Convention) introduced an exception to the rule of double criminality (with possible reservations), reversed the principle of the political offence exception and the fiscal offence exception, restricted the exception of "own nationals" and, "statutory limitations" provisions and further restricted the speciality principle.

The final goal, the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (EAW Framework decision), has radically changed the concept of extradition as it was known before, due to the principle of mutual recognition of criminal judgments that is the underlying idea to this document. The most important differences on substance are the abolition of dual criminality for a list of 32 offences, total abolition of political, military and fiscal offence exceptions, abolition of the own nationals exception, and the possibility of a waiver of the rule of speciality. Procedural differences are equally important: direct

contacts among judicial authorities as a rule, standard form for request for surrender, express right to legal counsel and time limits both for decision on surrender and surrender itself.

The most common criticism of the existing extradition system among Council of Europe member states is that it is too long and that there is too much political influence on extradition decisions. There is no doubt that the surrender procedures among EU member states are significantly shorter and less complicated. But it should be stressed at this point that some solutions in the EAW Framework decision are controversial and give rise to both discussion and criticism by practitioners and academics alike. Therefore, in our desire to improve the system of extradition among Council of Europe member states, we should carefully consider the solutions found in the framework of the European Union and selectively decide on their possible adoption in new or revised Council of Europe documents, with regard to the respect of rule of law and guarantee to fair trial. The efficiency of criminal prosecution and in this respect also co-operation in criminal matters should be considered in the light of human rights protection.

The discussions conducted in the Committee of experts on the operation of European conventions on co-operation in criminal matters in October this year and decisions deriving from these discussions (doc. PC-OC (2006) 15) are to be supported. The possibility of simplified extradition procedures and the possibility of a waiver of the speciality rule are certainly initiatives that have proven to be efficient in the countries that recognise such procedures and a revision of the 1957 Convention in this direction could shorten extradition procedures. Also measures to introduce time limits for extradition procedures would be welcome. The continuation of work of experts in this area with respect to these and other issues that emerged in the PC-OC discussions is of crucial importance for further improvement in co-operation in criminal matters.

But at the same time member states should bear in mind that efficiency of international co-operation depends not only on the legal basis, but - and it is too often forgotten - on personal dedication and personal contacts of people working on concrete cases. A good example has been set by, for example, the European judicial network constituted in the framework of the European Union. Discussion on the establishment of similar network - possibly under PC-OC auspices - is definitely a very good step in facilitation of co-operation in criminal matters.

Moscow, 9 November 2006

AD Second session - "TOWARDS AN IMPROVEMENT OF THE EFFICIENCY OF THE OPERATION OF THE EUROPEAN CONVENTIONS ON JUDICIAL CO-OPERATION IN CRIMINAL MATTERS: SETTLEMENT OF DISPUTES CONCERNING THE INTERPRETATION OR THE APPLICATION OF THE CONVENTIONS"

As well as the modernisation of the European conventions on extradition and mutual legal assistance, which was the topic of today's morning session, also the matter of dispute settlement is important for effective co-operation in criminal matters. Both topics are closely linked and deliberations on possible mechanisms for settlement of disputes should be considered in the framework of the efforts of the PC-OC for modernisation of the relevant Council of Europe conventions.

We could even agree that the matter of dispute settlement is a key element in ensuring an effective implementation of judicial co-operation in criminal matters. Namely, a unified system of dispute settlement relating to the interpretation and application of the relevant Council of Europe conventions would contribute considerably to improvement of communication between States parties to the conventions and ensure a consistent interpretation of the conventions.

The Council of Europe conventions in the criminal field define various types of dispute settlement mechanisms, while some of them do not refer to this question at all - for example the "European Convention on Extradition" of 1957. Therefore the PC-OC should in its deliberations on the need to modernise relevant Council of Europe conventions study also the question of how to harmonise mechanisms for settlement of disputes on the interpretation or application of the conventions and extend it also to those conventions, which do not provide for it. We are of the opinion that the form and extent of a new document should be proposed by the PC-OC and the CDPC on the basis of their experience and the work which has been and will be done according to "Resolution No 5 on the functioning of the Council of Europe conventions on judicial co-operation in criminal matters", adopted at the 26th Conference of European Ministers of Justice in Helsinki.

We estimate that regarding different mechanisms for dispute settlement the first step should always be bilateral consultation between involved states. If the attempt to find the solution to a dispute bilaterally fails, a friendly settlement procedure at the level of the PC-OC, the CDPC or other competent body for concrete convention should take place. To this end we support also the Secretariat proposal, contained in the document PC-OC (2006) 02, that a list of experts should be drawn up by the Council of Europe to give a consultative opinions in concrete cases of disputes. The next step would be arbitration procedure, if both involved parties agree to it, since the prior consent to arbitration gives some guarantee that the decision will be respected. A permanent list of arbitrators, drawn up by the Council of Europe, would contribute to more consistent decisions in arbitration procedures.

Finally we would like to stress the important role of the PC-OC, which represents the forum for exchanging of views of practitioners and helps in interpreting provisions of the conventions. Because of these preventive activities, existing dispute settlement mechanisms are rarely needed or used. Also the role of the CDPC in implementing the existing friendly settlement of disputes procedures should be highly appreciated.

Moscow, 9 November 2006