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ROMÂNIA

Nr. 275 din 19.03.2012

Parlamentul României
Camera Deputaţilor

INFORMARE

privind participarea la lucrările Biroului, Comisiei permanente precum şi ale Comisiei pentru cultură, educaţie şi media, Comisiei pentru probleme juridice şi drepturile omului, Comisiei pentru monitorizarea angajamentelor asumate de statele membre şi Subcomisiei pentru alegerea judecătorilor la Curtea Europeană a Drepturilor Omului ale Adunării Parlamentare a Consiliului Europei (Paris, 5 – 13 martie 2012)

În perioada 5 – 13 martie 2012 s-au desfăşurat la Paris reuniunile comisiilor Adunării Parlamentare a Consiliului Europei (APCE) după cum urmează: reuniunea Comisiei pentru cultură, ştiinţă, educaţie şi media, a Comisiei permanente şi a Biroului Adunării, a Comisiei pentru probleme juridice şi drepturile omului şi a Comisiei pentru monitorizarea angajamentelor asumate de statele membre, precum şi a Subcomisiei pentru alegerea judecătorilor la Curtea Europeană a Drepturilor Omului.

La aceste acţiuni au participat, din partea Delegaţiei Parlamentului României la Adunarea Parlamentară a Consiliului Europei, domnii deputaţi **Cezar Preda**, Preşedintele Delegaţiei Parlamentului României la APCE, **Adrian Năstase şi Tudor Panţîru,** precum şi doamna Nadia Ionescu, director, secretara Delegaţiei Parlamentului României la APCE.

Pe ordinea de zi a lucrărilor **Comisiei pentru cultură, ştiinţă, educaţie şi media** a APCE care a fost prezidată de domnul **Gvozden Srećko Flego**, preşedintele Comisiei, au fost supuse spre dezbatere mai multe rapoarte: parlamentarul din Franţa, François Rochebloine, a supus amendării şi a fost adoptat, în unanimitate, un proiect de rezoluţie privind „Buna guvernare şi etica în sport"; raportul parlamentarei din Luxemburg, Anne Brasseur, privind „Nevoia combaterii meciurilor aranjate", a supus amendării şi a fost adoptat, în unanimitate, un proiect de rezoluţie şi un proiect de recomandare; raportul parlamentarei din Spania, Carmen Quintanilla, privind „Dreptul familiei privind libertatea de a alege tipul de educaţie în Europa", urmează să fie supus spre dezbare în cadrul sesiunii ordinare a APCE, din aprilie 2012.

Doamna directoare Nadia Ionescu a informat, în absenţa parlamentarilor români membri ai Comisiei, în legătură cu proiectul de program pentru reuniunea de la Bucureşti şi Constanţa a, programată pentru luna mai a.c. şi în legătură cu detaliile tehnice de organizare. Preşedintele **Gvozden Srećko Flego** a precizat că decizia finală privind programul şi desfăşurarea concretă a reuniunii din Romania va fi luată de Comisie în aprilie, la reuniunea din marja sesiunii APCE, după ce parlamentarii vor informa parlamentele naţionale şi se va vedea câţi membri ai Comisiei vor face deplasarea la Constanţa.

Parlamentara din Armenia, **Zaruhi Postanjyan**, a susţinut, în cadrul reuniunii comisiei, o declaraţie şi a supus amendării raportul privind **„Protejarea libertăţii de exprimare şi de informare pe internet şi media on-line"**; membrii Comisiei au aprobat un addendum la raport şi au adoptat, în unanimitate, un amendament la proiectul de rezoluţie.

În continuarea lucrărilor Comisiei au avut loc dezbateri pe marginea proiectului de raport privind „Etica ştiinţei" al parlamentarului polonez Jan Kazmierczak unde au luat cuvântul personalităţi de seamă, printre care, Directoarea generală a UNESCO, doamna Irina Bokova, Directorul Oficiului de evaluare a tehnologiei din cadrul Bundestag-ului german, profesorul Armin Grunwald, Şeful Secţiei UNESCO privind Etica ştiinţei şi tehnologia, domnul John Crowley, Team Leader-ul pentru Bioetică din cadrul Sectorului UNESCO pentru ştiinţe sociale şi umane, doamna Dafna Feinjolz, Vicepreşedinta Academiei pentru Etică din Franţa, profesoara Michele Guillaume-Hofnung, etc.

Pe ordinea de zi a **Biroului Adunării Parlamentare a Consiliului Europei** a figurat agenda celei de a doua părţi a Sesiunii ordinare 2012 a APCE; de asemeni, a fost dezbătut proiectul de program pentru organizarea Forumului mondial pentru democraţie, care va avea loc la Strasbourg în luna octombrie a.c. Totodată, au fost aprobate propunerile privind reprezentarea organizaţiei la acţiuni ale altor foruri internaţionale, au fost audiate comunicări ale secretarului general şi secretarului general adjunct ai Consiliului Europei şi a fost decisă data şi locul următoarelor reuniuni. Biroul APCE a discutat şi pe marginea oportunităţii trimiterii în Federaţia Rusă a unei misiuni postelectorale dar nu s-a luat nici o decizie.

Într-o discuţie purtată cu şeful Delegaţiei Parlamentului României la APCE, Preşedintele APCE, parlamentarul francez Jean Claude Mignon, a confirmat intenţia de a face o vizită oficială în România în toamna anului în curs. Detaliile urmează să fie convenite prin intermediul secretariatului Delegaţiei Parlamentului României la APCE.

În cadrul unei dezbateri de actualitate, la iniţiativa grupului PPE, Biroul APCE a propus **Comisiei permanente** adoptarea unei declaraţii referitoare la deteriorarea situaţiei politicienilor femei si bărbaţi aflaţi în închisoare în Ucraina. Declaraţia adoptată de membrii Comisiei Permanente, în ciuda opoziţei vehemente a şefului Delegaţiei parlamentului Ucrainei la APCE, Ivan Popescu, **menţionează în ultimul paragraf „posibile sancţiuni" în cazul în care**

autoritățile ucrainiene nu vor da curs solicitărilor referitoare la „utilizarea tuturor mijloacelor legale pentru eliberarea foștilor membri ai guvernului astfel încât aceștia să poată participa la viitoarele alegeri parlamentare". Parlamentarii ruși prezenți la reuniune s-au abținut de la vot.

În continuarea lucrărilor Comisiei permanente, **parlamentarii europeni au adoptat o declarație referitoare la situația din Siria în care se exprimă profunda îngrijorare față de deteriorarea situației din această țară și se apreciază că „un guvern care bombardează și ucide în mod sistematic propriul popor, nu poate avea pretenții de legitimitate".**

În textul aceleiași declarații, APCE își exprimă regretul față de poziția adoptată de Federația Rusă „singurul stat membru al Consiliului Europei care s-a opus prin veto rezoluției Consiliului de securitate al ONU care îi cerea președintelui Assad să plece" și se exprimă speranța ca „Rusia să nu uite angajamentele sale față de Consiliul Europei: Adunarea cere Rusiei să nu se mai opună prin veto niciunei viitoare rezoluții al Consiliului de securitate al ONU referitoare la acest subiect".

Membrii Comisiei permanente a APCE au dezbătut și adoptat în unanimitate, între altele, ***raportul cu tema „Necesitatea unor expertize independente și credibile" elaborat de șeful Delegației Parlamentului României la APCE, deputatul Cezar Florin Preda.***

În prezentarea raportului, deputatul român a evocat ***riscurile de credibilitate legate de finanțarea expertizelor și responsabilitatea ce revine autorităților și politicienilor pentru decizii ce au avut ca punct de plecare expertize și evaluări ale căror concluzii s-au dovedit ulterior parțial sau integral eronate.***

În susținerea raportului parlamentarului român au intervenit în termeni elogioși, subliniind importanța continuării demersului și a creării unor mecanisme de implementare a recomandărilor, parlamentarul italian Luca Volonte, președintele Grupului PPE din cadrul Adunării, parlamentarul ucrainian Ivan Popescu și președinta Comisiei pentru probleme sociale, sănătate și dezvoltare durabilă a APCE, parlamentara elvețiană Liliana Maury Pasquier.

Comisia permanentă a adoptat în aceeași ședință, cu majoritate de voturi, ***raportul senatorului Gyorgy Frunda, vicepreședinte al Comisiei juridice și pentru drepturile omului a APCE, cu tema „Un protocol adițional la Convenția Europeană a Drepturilor Omului privind minoritățile naționale***".

În cadrul reuniunii **Comisiei pentru probleme juridice și drepturile omului** a APCE, a fost discutată sesizarea unor parlamentari reprezentând opoziția din Belgia prin care se contestă suspendarea procedurii de amendare a Constituției decisă de către partidele majorității din această țară și s-a decis solicitarea unor opinii din partea Comisiei de la Veneția.

În continuarea lucrărilor au avut loc schimburi de vederi și informații cu Președintele Comisiei de la Veneția, Gianni Buquicchio și Președintele GRECO, Marin Marcela.

La reuniune au participat **parlamentarii români Adrian Năstase şi Tudor Panţîru**, acesta din urmă fiind autorul unui raport de opinie privind **Proiectul celui de-al patrulea Protocol adiţional la Convenţia Europeană privind Extrădarea (ETS No. 24).**

Raportul deputatului român Tudor Panţîru a fost adoptat în unanimitate de membrii Comisiei Adunării Parlamentare a Consiliului Europei.

În cadrul reuniunii **Subcomisiei pentru alegerea judecătorilor la Curtea Europeană a Drepturilor Omului** a fost aprobată lista celor trei candidaţi pentru alegerea judecătorilor la Curtea Europeană a Drepturilor Omului propuşi de către Belgia, pentru alegerile care vor avea loc în luna aprilie a.c, în cadrul sesiunii APCE.

La lucrările **Comisiei pentru monitorizare** a Adunării Parlamentare a Consiliului Europei, a participat, din partea Delegaţiei Parlamentului României la APCE, domnul deputat **Adrian Năstase.**

Pe agenda Comisiei APCE au figurat dezbaterea proiectului de raport preliminar privind onorarea obligaţiilor şi angajamentelor de către Federaţia Rusă, co-raportor parlamentarul Gyorgy Frunda; moţiunea referitoare la deschiderea procedurii de monitorizare a Ungariei şi a avut loc audierea raportorilor APCE în urma vizitelor de documentare în Ucraina, Republica Moldova, Armenia şi Azerbaidjan.

Cezar PREDA, deputat
Şeful Delegaţiei Parlamentului României la APCE

Adrian NĂSTASE, deputat

Tudor PANŢÎRU, deputat

Redactat: Nadia Ionescu

Monsieur le Président,

Mesdames et Messieurs,

Chers collègues,

Le rapport qui vous est soumis aujourd'hui ne peut pas tomber mieux dans le contexte de l'actualité et je remercie d'autant plus les membres de la commission de l'environnement de m'en avoir confié sa rédaction.

En effet, depuis quelques mois, les médias ne cessent de nous abreuver de scandales liés à des expertises qui ont été faites sans indépendance aucune, que ce soit au niveau médical, environnemental, énergétique ou tout autre domaine.

Il s'agit d'un vaste problème qui nous concerne tous dans notre vie quotidienne. Je citerai, à titre d'exemple, le vaccin H1N1, les prothèses de santé qui font la une de nos journaux en ce moment, le sang contaminé et j'en passe.

Cette question est d'autant plus importante car elle a des répercussions très graves non seulement sur nous, en tant qu'individu mais également pour notre environnement. C'est la raison pour laquelle la commission de l'environnement avait estimé que le moment était venu de demander à nos gouvernements de prendre les mesures qui s'imposent.

Le rapport vise tout d'abord à dénoncer clairement la pratique devenue courante du financement des expertises, ce qui entraîne invariablement un problème de crédibilité. En effet, la plupart des chercheurs ont besoin de trouver des financements pour leurs recherches, ce qui les amènent à travailler pour des groupes d'intérêts privés. C'est ainsi que l'on s'aperçoit très souvent que les résultats varient selon les suites qu'on veut y donner, selon les commanditaires et si les experts ont des intérêts directs dans le domaine soumis à l'expertise.

Bien sûr, je ne voudrais pas accuser les experts de tous les maux, car il existe toujours, selon le domaine concerné, des répercussions que l'on ne peut connaître que bien des années plus tard et les experts eux-mêmes ne peuvent pas toujours prévoir les retombées à moyen et à long terme sur la santé et l'environnement.

J'aimerais souligner que ce rapport porte surtout sur les expertises en tant que tel. En effet, il y a également une catégorie d'expertises post catastrophes (catastrophes naturelles, accidents de toutes sortes, etc....) qui nécessiteraient l'élaboration d'un autre rapport car elles comportent d'autres implications qui sont surtout d'ordre financier et économique mais également des enjeux politiques. J'espère d'ailleurs que la nouvelle commission des questions sociales se penchera sur cette question dans un proche avenir car elle mérite vraiment qu'on s'y attarde.

En conséquence et compte tenu de ce qui précède, il est proposé qu'une des premières mesures à prendre serait d'établir un guide des bonnes pratiques et de créer un comité multidisciplinaire de haut niveau qui veillerait ainsi au respect des règles de déontologie.

Nous demandons également de veiller à avoir recours à des experts indépendants et, pour ce faire, de créer un fonds public destiné à financer les expertises dites sensibles.

Afin d'assurer au mieux la crédibilité et l'impartialité des expertises, nous proposons d'associer dès le départ des représentants de la société civile et de mettre en place un système de traçabilité des expertises et d'en diffuser les conclusions.

Je ne pense pas que les mesures que nous proposons soient draconiennes mais elles auraient au moins le mérite de mettre un place un système visant à assurer la crédibilité et l'indépendance des experts chargés notamment des expertises dites sensibles.

Enfin, avant de conclure, permettez-moi de vous dire combien je regrette que ce rapport soit présenté en commission permanente. Compte tenu de l'importance de cette question, qui comme je vous l'ai déjà dit, nous concerne ou nous concernera tous à un moment ou à un autre, il me semble que nous aurions pu en débattre en assemblée plénière. Je le regrette profondément.

Je vous remercie.

Doc. 12873
20 January 2012

The need for independent and credible expert assessments

Report[1]
Committee on the Environment, Agriculture and Local and Regional Affairs
Rapporteur: Mr Cezar Florin PREDA, Romania, Group of the European People's Party

Summary

In order to be credible and trustworthy, expert assessments in fields such as the environment, health, energy, finance or civil protection must be independent and impartial.

Recent events have shown that economic interests and a lack of information have often led to health scandals (contaminated blood, growth hormones, asbestos).

It is therefore essential, among other measures, to instigate model rules, to impose the traceability of expert assessments and for them to operate in a collegial framework.

[1] Reference to committee: Doc 11892, Reference 3562 of 29 May 2009.

A. Draft resolution[2]

1. Recent events have highlighted the vital need for independent, impartial expert assessments in fields such as the environment, health, energy, finance or civil protection.

2. Too many expert assessments are based on causal hypotheses, some of whose repercussions are unknown. Experts therefore lack the requisite distance to gauge the medium- and long-term impacts on the environment and human health.

3. In this connection, the Parliamentary Assembly notes that the findings of these assessments vary according to the source of funding, and that this approach can be different when assessments are made after incidents, when the implications are economic, financial and possibly political.

4. The Assembly regrets that economic interests and the lack of full, transparent information has led to many health-care scandals (contaminated blood, growth hormones, asbestos, etc), which have had serious repercussions on human health.

5. The Assembly considers that a legal framework could help reinforce the credibility of expert assessments by preventing external pressure.

6. The Assembly considers that if expert assessments are to be transparent and independent, they must be the subject of a debate in which all the different points of view can be expressed, and it would strongly advise involving representatives of universities, scientific and technological research circles and non-governmental organisations, either as experts or as observers.

7. The Assembly also stresses the need to ensure traceability of expert assessments as a means of ensuring their independence.

8. The Assembly consequently invites the governments of member and non-member States of the Council of Europe to:

   8.1. call on the services of independent experts, particularly in fields requiring in-depth scientific and technical expertise;

   8.2. set up a public fund to finance so-called “sensitive” expert assessments;

   8.3. draw up a handbook of good practice and set up a high-level multidisciplinary committee responsible for ensuring compliance with ethical rules;

   8.4. establish a system of consultation with representatives of civil society;

   8.5. prevent conflicts of interests, particularly vis-à-vis so-called “sensitive” expert assessments, by means of a declaration;

   8.6. introduce an assessment traceability system in order to enhance transparency and independence;

   8.7. ensure proper follow-up of the consequences of expert assessment conclusions;

   8.8. systematically disseminate expert assessment conclusions;

   8.9. set up joint committees for transfrontier expert assessments;

   8.10. adopt procedures for ensuring transparency and public information.

[2] Draft resolution adopted unanimously by the committee on 28 November 2011.

B. Explanatory memorandum by Mr Preda, rapporteur

Contents

1. Introduction

1. The independence and impartiality of expert assessments form a condition sine qua non for their reliability and legitimacy. Unfortunately, recent events have shown us that the assessments were not always performed independently. It is fitting to recall that the etymology of the word "im-partiality" implies that the opinion delivered is not that of a single party but is a matter of collective debate by two or more parties.

2. What is a scientific assessment?

2.1. General considerations

2. An assessment is an investigation which one person or a group of persons possessing knowledge and know-how in the field concerned is asked to carry out by another person or group, generally a public institution.

3. An assessment is needed when a decision which is to be taken requires knowledge of a field which is not within the sphere of common knowledge. When the field concerned is known to be of a scientific nature, one or more players within the sector concerned, and possibly in associated sectors, are usually called upon. The assessment thus provides the link between knowledge and a policy decision.

4. It is also usual for an expert assessment to be requested after a natural or other disaster which has serious effects on the environment and on individuals' health.

2.2. Assessment frameworks

5. The first questions which arise are who has requested the assessment and who is to finance it. In practice, it is very often the case that the findings vary according to the intended follow-up action, particularly when those commissioning the assessment have direct interests in the field being assessed. This is also and especially true of scientific assessments. On the other hand, the approach is very different when assessments are made following an incident, and particularly following a disaster. Indeed, the implications are economic, financial and possibly political.

2.3. The particular nature of the scientific approach

6. The scientific approach has certain particular features. It operates in accordance with its own structure and with a specific language and codes.

7. Making a scientific assessment of a situation presupposes building an analytical model, that is to say a set of abstract processes describing how a real situation develops. A model is necessarily based on consideration of a limited number of parameters, the selection of which – often on an unclear basis – is crucial and necessarily open to challenge. The model is based on assumptions and takes account of the parameters used in its production.

8. The results yielded by this model are then compared to known results. The model is then presented to a gathering of scientists (and/or published) and subjected to collective review, during which its author is called upon to reply to questions from his or her peers. Several models are sometimes developed for the same situation.

9. The models serve as tools for predicting and simulating possible future situations.

10. The question whether a given model is well adapted to another situation is rarely raised. However perfect a model may be, it is always confined to a particular, often ideal, situation. The free fall model, for example, takes no account of friction. At present, models that have to reflect the effect of friction vary in their efficiency – it is very difficult to describe the fall of an object in precise terms owing to the considerable number of parameters to be taken into account. In the case of a climate model, the number of parameters is even greater and it will be even harder to create.

11. Models devised in this way enable the development of a situation to be predicted. This prediction is based on experimental data used by the model, and the accuracy of these data will significantly influence the results produced by the model. Let us take climate forecasting models as an example. In its 2007 report on climate change, the Intergovernmental Panel on Climate Change (IPCC) based its findings on the temperature changes recorded from 1850 to the present day. Temperatures have been recorded precisely for only 50 to 70 years; earlier values are not as exact, and the results provided by the various models will accordingly not be very precise. It will then be necessary to gauge the reliability of the results obtained, putting a figure on the probability, for instance, that the earth is warming up. In this connection, it may come as a surprise to note that the temperatures announced by the IPCC for the 1850s are accurate to one tenth of a degree!

12. Scientists are used to dealing with models. They know their limits and are therefore aware that the credibility of the result provided by the model is limited. This credibility is, incidentally, often calculated: a GPS location is pinpointed to within a few metres for example.

13. The non-scientific public is frequently unaware of this aspect and often expects a perfectly accurate and indisputable result.

14. It is extremely difficult to model, and hence scientifically assess, actual physical situations. Some details of the water cycle remain unclear, and it is scientifically impossible is say exactly why a particular forest is showing signs of weakness or what will become of each molecule of fertiliser spread on a field. By contrast, climate study centres have a considerable amount of data at their disposal, such as information on sulphur and CO_2 concentrations in the atmosphere. These data enable assumptions to be made and warnings sounded, but no more than that from a scientific standpoint. The process of scientific identification is necessarily limited by the multiplicity of factors that come into play in natural processes.

15. Finally, it must be pointed out that scientific research work is steered by the scientific group itself and not from outside it. The focus of new work is often dependent on the results of previous work. The development of a new law or model rarely follows a linear course.

3. Position and special role of the scientific expert

16. Frequently, it is a decision-making body which commissions an assessment from a scientist or group of scientists, who usually belong to a public research institution not part of the decision-making body. This is the case, for instance, in France with the National Centre for Scientific Research (CNRS). The scientist is thus positioned at the interface between the relevant knowledge and the policy decision and has to input the scientific knowledge into the decision-making process.

17. The scientist thus faces what for him or her is an unfamiliar situation, namely the requirement to provide, by a specified deadline, the answer to a question that must make it possible to take or at least help to take a decision. In a scientific context, replying "I don't know" is perfectly acceptable, whereas this reply is more difficult to formulate in the context of an expert assessment and is often unacceptable for the decision-making body.

18. This body needs at least a pseudo-commitment or, at all events, a diagnosis.

19. Quite often, the scientist who has become an expert will then be called upon to go beyond the replies resulting from scientific analyses and to give his or her own opinion, which will normally only commit him or her on the basis of his or her own convictions.

20. By way of illustration, mention might be made of the answers provided by the IPCC in 1990 concerning the future of the climate: "The calculations convince us that ...", "we consider that ...". In this particular case, the models and their results are marred by significant uncertainties and the only correct answer from the scientific point of view is, "We are not in a position today to provide a scientific reply to the

question asked". However, the group goes further and gives its opinion – it oversteps, or rather disregards, its scientific role so as to comply with that of an expert.

4. Credibility of the assessment

21. The question of the credibility of a scientific assessment therefore naturally arises. In order to reply to the question asked, the scientist or his or her group will necessarily be called upon to go beyond the purely technical results. This action is not open to reproach in itself but must be clearly acknowledged. It no longer has to do with the result of an indisputable technical analysis but with the group's conviction, which is also important. A clear distinction must be drawn between scientific results and personal conviction. The scientist's "I don't know" must be rehabilitated and not denigrated.

22. In order to obtain a credible assessment, should it be entrusted to just one expert or should a panel of experts be set up? The choice of experts is crucial, and that is the crux of the problem. In this context, it seems essential to avoid preferring hyper-qualification as a guarantee of quality, as that is often synonymous with considerable specialisation, whereas an assessment requires multidisciplinary and transdisciplinary knowledge.

23. Making this kind of assessment can clearly be seen to constitute a discipline with its own requirements, but it is not currently recognised as such. It appears important to specify the skills appropriate to assessment. Some of the scientists employed in laboratories could thus be involved on a more or less permanent basis in producing assessments. Themes such as "water" or "oil" could be the subject of ongoing work, with publications, specialist debates and public debates.

24. Another pitfall to be avoided is conflict of interests. In order to do their work, most researchers need to find funding in addition to public money (which is often insufficient). This leads them to work for private interest groups, which have recourse to the best specialists in their field. In the context of an expert assessment, it would be a pity to do without these skills just because they also benefit a private group involved in the subject area of the assessment. But of course the potential conflicts of interests must be realised, and their compatibility with the specific assessment determined.

25. One question that arises is whether or not it is necessary to call on so-called independent experts, government experts or dependent specialist experts. These three categories offer both advantages and drawbacks, but the choice of the category primarily depends on the nature of the assessment to be carried out and of the persons or organisations directly involved.

26. It is also important to provide a precise definition of the term "independence".

27. That leaves the issue of the methodology employed to produce the assessment. It appears necessary to set up groups of scientists whose members are bound to have divergent opinions. The group must consist of at least two sub-groups, one arguing in favour of the proposition and the other having an opposite stance. Scientific disputation is essential for the proper conduct of the analysis.

28. In this connection, and in view of the nature of the questions asked in the context of an assessment, it would seem worthwhile to establish a "public forum" for assessments. A public process constitutes a sort of critical sounding board.

29. It should be noted that this approach is different from that often employed, which is to produce an assessment followed by a counter-assessment. This method excludes the cut and thrust of debate.

5. Expert assessment and the concept of risk

30. A scientific assessment does not eliminate risk, but has to determine whether a risk is present, and what kind of risk it is. It is here that the crux of the problem lies. The question of strategic or environmental evaluation should obviously be raised.

31. Expert assessments following disasters are not only required to establish their causes, but should also have the capacity to lay down and put forward safety and prevention rules for the future.

32. The need has also emerged to consider the issue of the consequences of expert assessments where the findings have cross-border implications, for example an assessment relating to the laying of a gas pipeline or the construction of a nuclear power station.

6. Use of expert assessments

33. What use is made of an expert assessment? In order to answer this question, it can be reiterated that an assessment is generally commissioned by a decision-making body, often of a political nature. The aim is therefore to help policy makers take a decision. That is the primary function of the assessment.

34. Responsibility is then shared between the decision-maker and the scientist. It might, incidentally, be asked whether in some specific cases an assessment is not commissioned when the decision has already been taken!

35. An assessment may, unfortunately, also serve the interests of lobby groups and private groups with financial objectives.

7. Comments on a few specific cases

36. At this stage of the discussion, it seems wise to look at certain specific cases, which are not exhaustive.

7.1. Asbestos

37. The problem of asbestos is a most telling example. True, for very many years certain groups met with a rebuff and went unheard. Thanks to stubbornness and more objective assessments, as well as the European Union's successive programmes of environmental action accentuating the importance of preventing and reducing pollution of the environment, asbestos was finally recognised as a first-category pollutant with serious effects on human health and the environment.[3]

38. Council Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos seeks to prevent environmental pollution by asbestos; in addition, the substance was designated in Annex XVII of Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

39. The aim of these legislative provisions is to protect public and environmental health, to prevent, reduce and control environmental pollution by asbestos, to restrict the sale and use of asbestos and of products containing asbestos and to ensure that such products are labelled.

40. Inadequate management of the risks inherent in the use of dangerous substances can have irreversible consequences for human and environmental health. Workers' health can be affected in a number of ways, ranging from slight irritation of the eyes or skin, or asthma, to reproductive health problems and congenital malformations, or even cancer. The health impact can result from short-term exposure or multiple periods of exposure with the long-term accumulation of substances in the organism.

41. To prevent or reduce substances' negative environmental effects, above all surface and ground water pollution, soil pollution and air pollution, including the greenhouse effect, and any risk to public health, it is necessary to conduct environmental and human health hazard assessments.

42. Since hazard assessments are made by a number of entities (industry, public authorities, non-governmental organisations (NGOs)), differences may arise with regard to the interpretation of the results, and it is important that the hazard assessment should be underpinned by a code of ethics, which could constitute a starting point for overcoming these difficulties.

7.2. Pesticides

43. Environmental hazard assessment is also encountered in the case of biocidal products, plant protection products and all other chemical substances which, by virtue of the quantity placed on the market, come within the scope of Regulation (EC) No. 1907/2006 mentioned above, which encompasses a registration procedure, an evaluation procedure and a restriction procedure.

44. These procedures involve interpreting all the existing information on certain uses of substances, regarding which a number of hazard management options are developed.

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[3] See also the 1998 Assembly report "Dangers of asbestos for workers and the environment" (Doc. 8015) and Recommendation 1369 (1998).

45. In Romania for example, with regard to pesticides/plant protection products, in accordance with national and EU law, applicants for the authorisation of various chemical products/substances destined to be used, sold or placed on the market are required to seek an environmental opinion from the Ministry of Environment and Forestry. To obtain this opinion, the applicant must submit a file containing data on the eco-toxicological aspects and the action of the product in the environment.

46. To prevent or reduce the negative environmental effects of pesticides/plant protection products, above all surface and ground water pollution, soil pollution and air pollution, and the dangers they pose for public health and the environment, it is necessary to conduct environmental and human health hazard assessments. Following these environmental assessments, the following are determined:

- environmental restrictions (aquatic organisms, birds, bees, etc.);
- the distances at which pesticides can be used without entailing a risk of polluting surface or ground water;
- the indications of average risk level, which must obligatorily appear on the labels of the products in question.

47. The process of interpreting the results of hazard assessments gives rise to much discussion among the European Union member States' experts involved in these procedures, as a result of differing interpretations of Community law.

48. Standardisation of the action taken by the experts on the basis of a code of ethics could constitute a starting point for overcoming these malfunctions.

7.3. Natural disasters

49. Credible damage assessment during and after natural disasters (floods, landslides, dangerous weather events such as droughts or forest fires) constituted a key consideration in the drafting of national and EU law in this field. This aspect was, moreover, addressed both in Directive 2007/60/EC on the assessment and management of flood risks and in Romania's national strategy for flood risk management in the medium and long term.

50. The floods that have occurred in Romania in recent years have shown that correct, rapid assessment of damage necessitates high resolution satellite images to supplement the data supplied by the damage assessment committees established at the level of each affected administrative-territorial entity.

51. Apart from flood intervention measures, consideration must be given to related events such as accidental pollution of residential areas or industrial estates as a result of flooding. To manage these risks, owners must make budget provisions for flood protection work and the authorities administering watercourses must budget the equipment and resources needed to deal with pollution.

52. During periods of drought, particular attention must be paid to the risk of forest fires, which, along with floods, cause considerable damage to forest resources, damage which must be properly assessed with a view to rehabilitating the areas affected.

8. Conclusion and recommendations

53. In the light of the foregoing, it is clearly apparent that specimen rules urgently need to be laid down for the purpose of defining the context in which an assessment must be placed in order to make the final results indisputable.

54. Unarguably, experts will not always be able to ascertain the full implications and the human and environmental impact of the problem referred to them for assessment, and some uncertainty will always remain.

55. That is why these assessments must plainly be made in a collegial framework, including groups of scientists with presumably divergent opinions as well as civil society players.

56. Furthermore, the traceability of assessments will make for greater transparency and independence.

57. Lastly, it would be advisable to have specialised experts, especially in fields requiring technical knowledge, and to produce a handbook of good practice for them. These experts might be supervised by a committee of wise persons which would ensure due application of ethical rules.

13. Legal Affairs and Human Rights

a. An additional protocol to the European Convention on Human Rights on national minorities — Doc. 12879

Rapporteur of the Committee on Legal Affairs and Human Rights:
Mr György Frunda (Romania, EPP/CD)

Debate
Votes on a draft resolution and a draft recommendation

b. The situation of the inhabitants of Rhodes and Kos with a Turkish cultural background — Doc. 12526

Rapporteur of the Committee on Legal Affairs and Human Rights:
Mr Andreas Gross (Switzerland, SOC)

Debate
Vote on a draft resolution

c. International Convention for the Protection of all Persons from Enforced Disappearance — Doc. 12880

Rapporteur of the Committee on Legal Affairs and Human Rights:
Mr Christos Pourgourides (Cyprus, EPP/CD)[1]

Debate
Votes on a draft resolution and a draft recommendation

14. Social Affairs, Health and Sustainable Development

a. The environmental impact of sunken shipwrecks — Doc. 12872

Rapporteur of the Committee on Social Affairs, Health and Sustainable Development:
Ms Elsa Papadimitriou (Greece, EPP/CD)

Debate
Vote on a draft resolution

b. The need for independent and credible expert assessments — Doc. 12873

Rapporteur of the Committee on Social Affairs, Health and Sustainable Development:
Mr Cezar Florin Preda (Romania, EPP/CD)

Debate
Vote on a draft resolution

[1] As the rapporteur is no longer a member of the Assembly, the report will be presented by another member of the committee

15. Rules of Procedure, Immunities and Institutional Affairs

Self-evaluation by Europe's national parliaments: procedural guidelines to improve the quality of parliamentary work — Doc. 12875

Rapporteur of the Committee on Rules of Procedure, Immunities and Institutional Affairs:
Mr Andreas Gross (Switzerland, SOC)

Debate
Vote on a draft resolution

16. Other business

17. Next meeting

– Tirana (Albania), 25 May 2012

AS/Per (2012) OJ 01 Rev.
8 March 2012

Standing Committee

Revised Draft Agenda

of the meeting to be held
in Paris on Friday 9 March 2012 (opening at 9 a.m.)
at the French National Assembly (Salle Lamartine)
101, rue de l'Université
Tel: + 33 (0)3 90 21 50 82 Fax : + 33 (0)3 88 41 27 33
Mobile phone (8 and 9 March 2012) : +33 (0)6 62 13 93 51
(Métro : Invalides/Assemblée nationale)

1. **Opening of the meeting by Mr Jean-Claude Mignon, President of the Parliamentary Assembly**

2. **Examination of new credentials** — Doc. 12883

3. **Modifications in the composition of committees** — Commissions (2012) 03 and addendum

4. **Requests for a current affairs debate or debate under urgent procedure**

   - Request for a debate under urgent procedure on "The intended suspension of the constitutional amendment procedure in Belgium" ;

   - Request for a current affairs debate on "The deterioration of the situation of imprisoned politicians in Ukraine"

This document is the convocation to the meeting for the members of the Standing Committee

Copy for information to: Secretaries of national delegations;
Secretaries of political groups;
Secretaries of observer and partner for democracy delegations.

Members who wish to present amendments and sub-amendments are invited to table them in writing with the Table Office as soon as possible.

5.	**Agenda** Adoption of the draft agenda	AS/Per (2012) OJ 01 Rev.
6.	**Second part-session of the Parliamentary Assembly (23-27 April 2012)** Consideration of the draft agenda	AS/Bur (2012) 13
7.	**References, transmissions and modifications of references to committees** Consideration of the proposals submitted by the Bureau of the Assembly	AS/Bur (2012) 15
8.	**Follow-up to Resolution 1842 (2011) on the terms of reference of Parliamentary Assembly committees – implementation of Resolution 1822 (2011) on the reform of the Parliamentary Assembly** Terms of reference of general rapporteurs (subject to a decision of the Bureau)	Resolution 1842 (2011) Resolution 1822 (2011) AS/Bur (2012) 19
9.	(Possibly) **Current affairs debate or debate under urgent procedure**	
10.	**Exchange of views with Mr Etienne Apaire, President of the Council of Europe Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs** (Pompidou Group) – 11 a.m. [approx.]	
11.	**Observation of elections**	
	Observation of the early parliamentary elections in Kazakhstan (15 January 2012) *Rapporteur of the Ad hoc Committee of the Bureau:* *Ms Elsa Papadimitriou (Greece, EPP/CD)* Debate	Doc. 12884
12.	**Political Affairs and Democracy**	
	The Council of Europe and the Eastern Partnership of the European Union *Rapporteur of the Committee on Political Affairs and Democracy:* *Mr Björn von Sydow (Sweden, SOC)* Debate Vote on a draft resolution	Doc. 12871

INFORMATION
SUBMITTED BY THE GENERAL PROCURATOR'S OFFICE OF UKRAINE

Referring to your request we inform you that the Pechersk District Court of Kyiv by its judgment dated 11.10.2011 found **Yulya Tymoshenko** guilty under Part 3 Art. 365 of the Criminal Code of Ukraine and sentenced her to 7 years imprisonment with deprivation of the right to hold certain public positions related to the implementation of organizational, administrative and administrative-economic duties for 3 years.

Yulya Tymoshenko was found guilty of abusing her powers and authority, characterized by the illegal interference in the activities of the independent economic entity - "Naftogaz of Ukraine" through giving illegal directives to the chairman of the "Naftogaz of Ukraine" with false information that the provisions of the mentioned directives were approved on 19.01.2009 by the relevant order of the Cabinet of Ministers of Ukraine on signing contracts with the "Gazprom" in 2009 for the purchase and sale of natural gas and natural gas transit for the period from 2009 to 2019 on the terms proposed by the Russian part. As a result, the actions of Yulya Tymoshenko caused losses to the "Naftogaz of Ukraine" in the amount of USD194.6 million or UAH 1 billion 516 million.

The court judgment was appealed by the sentenced person and her advocate but the Kyiv Court of Appeal rejected the appeals by its ruling dated 23.12. 2011 and left the verdict without change.

The defense lodged a cassation appeal on the court's decisions to the High Court of Ukraine specialized in handling civil and criminal cases. Currently, we have no information on the case to be considered.

The verdict of the Pechersk District Court of Kyiv dated 27.02.2012 found **Yuriy Lutsenko** guilty under Part 5 Article 191, Part 3 Art. 365 of the Criminal Code of Ukraine and sentenced him for the total crimes to 4 years imprisonment with deprivation of the right to occupy positions associated with the implementation of organizational, administrative and administrative-economic duties in institutions, enterprises, organizations of all types of ownership for 3 years, with confiscation of all property and deprivation of the 1st rank of civil servant.

In the same case **Leonid Prystuplyuk** was found guilty under Part 5 Art. 191, Part 3 Art. 358 of the Criminal Code of Ukraine and sentenced (the total crimes) to 3 years imprisonment with deprivation of the right to occupy positions associated with the implementation of organizational, administrative and administrative and economic duties_in institutions, enterprises, organizations of all types of ownership for 3 years and deprivation of the 13th rank of civil servant and special title of "major of militia." He was exempted from the main punishment with a 3 year trial period on the basis of Art.75 of the Criminal Code of Ukraine.

Yuriy Lutsenko was found guilty because after his appointment dated 04.02.2005 as the Minister of Internal Affairs of Ukraine he invited Leonid Prystuplyuk to serve as his driver. To improve the financial position of Leonid Prystuplyuk he appointed him by order of 15.02.2005 to the post of an operative employee of the Department on intelligence and investigation activities that did not meet the requirements of the Law of Ukraine "On Military Duty and Military Service" , the Regulations on Service by the Rank and File and Officers of the Internal Affairs Bodies. Later Yuriy Lutsenko issued a number of orders concerning Leonid Prystuplyuk's service (on his appointment, promotion, transfer, including transfer to the position of an assistant Minister in the Department of the current activities of the Minister' staff), although in fact Leonid Prystuplyuk served as a personal driver of the Interior Minister. In 2008, with the assistance of Yuriy Lutsenko Leonid Prystuplyuk illegally increased his length of service in the internal affairs bodies by adding the periods of his civilian positions from 1983 to 2005 to the years needed to get pension, payment of the interest premium for prolonged meritorious service and continuous service in the internal affairs bodies.

While working in the Ministry Leonid Prystuplyuk was unlawfully paid cash for the amount of UAH 139 646.06 – the difference between the actual funds received and the maximum cash provision of a driver. By Order dated 11.5.009 Yuriy Lutsenko awarded him a special title of "lieutenant-colonel of militia" and resigned him because of his age. For this reason Leonid Prystuplyuk illegally received a severance pay of UAH 27 739.47 and a pension worth of UAH 71 342.94.

Totally, Yuriy Lutsenko by prior agreement with Leonid Prystuplyuk took possession of public funds amounting to UAH 238 728.47.

As a result of illegal actions by Yuriy Lutsenko Leonid Prystuplyuk got an appartment for the book value of UAH 130 623.90 which he subsequently made his property, thus violating the constitutional rights of citizens who were registered with the Ministry of Internal Affairs of Ukraine for the apartment out of turn.

In addition, Yuriy Lutsenko in violation of item 9 of the Measures on Prudent and Rational Use of Budgetary Funds Provided for the Maintenance of Public Authorities and other Public Bodies approved by the ruling of the Cabinet of Ministers of Ukraine No. 943 of 22.10.2008 "On Saving of Budget Funds Provided for Maintenance of State and other Public Bodies" exceeded his official authority in the expenditure of budgetary funds for celebration of the Militia Day in 2008 and 2009, resulting in causing loss to the State in the amount of UAH 609.720.

In addition, Leonid Prystuplyuk repeatedly used deliberately false documents in his name: a certificate of the combatant, a diploma of the Automobile Technical School in the Rivne State Technical University and a diploma on his graduation from the Dubno affiliate university "Open International University of Human Development "Ukraine".

As of 03.03.2012 the appeal against the verdict of the District Court was not received.

On 20.08.2010 the Prosecutor General of Ukraine raised a criminal case vs acting Defense Minister of Ukraine **Vitaliy Ivashchenko** under Part 2 Art.364 of the Criminal Code of Ukraine and on 18.10.2010 - vs the arbitration head **Serhiy Mikheev** under Part 3 Art.365 of the Criminal Code of Ukraine.

According to the indictment, the court, in connection with the opening of the bankruptcy procedure on the Ministry of Defense state enterprise, appointed Serhiy Mikheev as a manager of its rehabilitation. Serhiy Mikheev made a plan of reorganization providing the sale of the company contrary to the Laws of Ukraine "On Renewing Debtor's Solvency or Declaring it Bankrupt" and "On Privatization of State Property ". In his turn, Vitaliy Ivashchenko having received the plan of reorganization in November 2010 and ignoring the opinion of the Legal Department and the Department of Economic and Business of the Ministry of Defense on its inconsistency with the law and the denial of their heads, approved (signed) a plan of reorganization, sold the structure of the national strategic importance for UAH 17.2 million although the experts estimated its actual market value of UAH 70.9 million (about USD 9 million). This fact caused serious consequences - harm to the public interests and the material loss to the State for the above amount which is 250 times more than the minimum subsistence income.

On 31.01.2011 the criminal case was transferred to the Pechersk District Court of Kyiv to be considered in essence. From 02.03.2011 it has been there with the panel of judges. Currently, the judicial investigation is under way, and the additionally declared witnesses and experts are interrogated at the request of the defenders of Vitaliy Ivashchenko. After that the court will go to the process of examining the criminal case and interrogation of the accused persons.

Vitaliy Ivashchenko was not a member of any political party, neither was he a member of the Cabinet of Ministers, and he was not connected with any opposition activities. He, being ex officio the Deputy Minister of Defense of Ukraine at that time, temporarily served as the Minister before the appointment of a new Minister of Defense of Ukraine.

Draft statement on the deteriorating situation of imprisoned politicians in Ukraine

The Parliamentary Assembly of the Council of Europe notes with concern, some 6 weeks following the Resolution 1862 (2012) on the functioning of democratic institutions in Ukraine, the absence of any tangible signs of its demands being met with regard to the criminal prosecutions initiated under Articles 364 and 365 of the Criminal Code of Ukraine against a number of former Government members, including the former Acting Minister of the Interior, Mr Juriy Lutsenko, the former Acting Minister of Defence, Mr Valeriy Ivaschenko, and the former Deputy Minister of Justice, Mr Yevhen Korniychuk, as well as the former Prime Minister, Ms Yuliya Tymoschenko.

On the contrary, despite calls of the Assembly to amend Articles 364 and 365 of the Criminal Code as they allow for post facto criminalisation of normal political decision-making, the Parliament of Ukraine failed to do so on 8 February 2012 thereby pre-empting the possibility for charges against former government officials based on these provisions to be dropped. Furthermore, on 27 February 2012, former Minister of Interior Lutsenko was convicted to 4 years of imprisonment on the basis of a trial which is alleged to have been unfair and for crimes which do not justify a term of imprisonment.

The fact that former Prime Minister Tymoschenko remains in detention and the recent conviction of Mr Lutsenko - notwithstanding their seriously deteriorating health - both strengthen the impression of selective justice.

The Assembly reiterates in this respect that "the assessment of political decisions and their effects is the prerogative of parliaments and, ultimately, of the electorate and not of the courts" and, once again, calls on the authorities of Ukraine – including the President – urgently to consider all legal means available to them to release these former government members and to allow them to compete in the forthcoming parliamentary elections.

The Assembly, through its Monitoring Committee, will continue to follow the situation closely. It notes that the Committee's co-rapporteurs will visit Ukraine at the end of March 2012 and expects full cooperation of the authorities with the co-rapporteurs, including the latter's access to the former government members detained. It recalls in this connection that it has invited the Committee to propose any further action as required by the situation, including with regard to the possible consideration of sanctions if the Assembly's demands are not met.

DRAFT STATEMENT ON SYRIA
Paris, 9 March 2012

The Parliamentary Assembly of the Council of Europe is appalled by the deterioration of the situation in Syria, where more than 8,000 persons have been killed in the last 11 months as a direct result of actions by the Syrian autocratic leadership against a pro-democracy uprising. For the Assembly, a government which systematically bombs and slaughters its own population cannot claim any legitimacy. The killings and related atrocities must end immediately.

The Assembly is shocked by the refusal of the Syrian authorities to allow the UN Humanitarian Chief, Valerie Amos, access to the country and the International Committee of the Red Cross access to the Baba Amr district in the city of Homs, which is devastated by a humanitarian disaster. Now that access has finally been granted, the Assembly emphasises the urgency of addressing the humanitarian needs, facilitating the effective delivery of assistance and ensuring safe access to medical treatment.

The 47-member UN Human Rights Council, in a resolution adopted only a few days ago, strongly condemned the continued "widespread and systematic" violations of human rights and fundamental freedoms by the Syrian authorities, including the use of force against civilians, arbitrary executions, the killing and persecution of protestors, enforced disappearances, torture and sexual violence, including of, and against, children. UN experts have found compelling evidence that Syrian officials may be guilty of crimes against humanity. These should be investigated and the perpetrators should be brought to justice without delay.

However, despite such findings and resolutions condemning the brutal actions of the Syrian authorities by both the top UN human rights body and the UN General Assembly itself, the UN Security Council has so far been unable to agree on action on Syria. The Assembly joins UN Secretary General Ban Ki-moon in denouncing the international community's failure in its duty towards the Syrian people and in calling for unity.

The Assembly, in particular, regrets the position taken by Russia, the only member state of the Council of Europe to veto a UN Security Council resolution calling for Assad to step down. Joining its President, Jean Claude Mignon, in his hope that "Russia does not forget its commitments within the Council of Europe", the Assembly calls on Russia not to veto any future resolution on the subject within the UN Security Council.

The Assembly is convinced that, in combating the dictatorship of Assad, every effort has to be made to reassure all Syrian citizens that, in so doing, it will be possible for them to live together, Christians and Muslims, Kurds and Arabs, Sunnites and Alawites, in a peaceful and pluralist democracy.

The Assembly fully supports the efforts of the League of Arab States to put an end to the violence and open the way for a peaceful transition to democracy. It particularly supports the efforts of the UN-Arab League peace envoy, Kofi Annan. It will follow closely the outcome of the latter's current visit to the region and will keep this issue high on its own agenda, notably through the work of its Committee on Political Affairs and Democracy.

AS/Bur (2012) OJ 03 rév
28 février 2012

Bureau de l'Assemblée

Projet d'ordre du jour annoté

de la réunion qui aura lieu à Paris
le jeudi 8 mars 2012 à 15h

Bureau du Conseil de l'Europe, 55, avenue Kléber, Paris 16e
Tél. : + 33 1 44 05 33 60 ; Fax : + 33 1 47 27 36 47 (Métro : Boissière)

Points à traiter éventuellement sans débat : 14, 15, 16, 17, 18, 19

1. Allocution d'ouverture du Président
[AS/Bur (2012) 12]

2. Ordre du jour
[AS/Bur (2012) OJ 03 rév]

Projet de décision: *adopter le projet d'ordre du jour révisé.*

3. Procès-verbal
[AS/Bur (2012) PV 02]

Projet de décision: *approuver le projet de procès-verbal de la réunion tenue à Strasbourg le 27 janvier 2012.*

Aux membres du Bureau de l'Assemblée
(Président et vice-présidents de l'Assemblée et
Présidents des groupes politiques et des commissions générales de l'Assemblée)

copie pour information aux secrétaires des délégations nationales et des groupes politiques et aux chefs de secrétariat des commissions générales de l'Assemblée

Ce document tient également lieu de convocation à la réunion

4. Commission permanente (Paris, 9 mars 2012)

i. Demandes de débat selon la procédure d'urgence / débat d'actualité

Aucune demande de débat selon la procédure d'urgence ou de débat d'actualité n'a été déposée à ce jour.

ii Examen du projet d'ordre du jour
[AS/Per (2012) OJ 1]

Projet de décision: *prendre note du projet d'ordre du jour.*

5. Deuxième partie de session de l'Assemblée de 2012 (Strasbourg, 23-27 avril 2012)

i. Comité mixte
[AS/CM-Mix (2012) OJ 2]

Projet de décision: *prendre note du projet d'ordre du jour.*

ii. Etablissement du projet d'ordre du jour
[AS/Bur (2012) 13]

Projet de décision: *établir le projet d'ordre du jour.*

6. Communications par

i. le Secrétaire Général et la Secrétaire Générale adjointe du Conseil de l'Europe
[Communication écrite]

Le Secrétaire Général et la Secrétaire Générale adjointe du Conseil de l'Europe pourraient faire des observations sur leur communication écrite et tenir un échange de vues avec les membres du Bureau. ***Projet de décision :*** *prendre note de la communication écrite du Secrétaire Général et de la Secrétaire Générale adjointe.*

ii. le Secrétaire Général de l'Assemblée parlementaire
[AS/Bur (2012) 14]

Projet de décision : *prendre note de la communication du Secrétaire Général de l'Assemblée.*

7. Observation d'élections

i. Kazakhstan : élections législatives anticipées (15 janvier 2012) :
[AS/Bur/Kazakhstan(2012) 3]

Une mission d'observation d'élection a eu lieu du 12 au 16 janvier 2012 ***Projet de décision*** *: approuver le rapport de la commission ad hoc.*

ii. Fédération de Russie : élection présidentielle (4 mars 2012) :
[Communiqué de presse]

Une mission d'observation d'élection a eu lieu du 29 février au 5 mars 2012 ***Projet de décision*** *: prendre note du communiqué de presse de la commission ad hoc.*

iii. Elections législatives en Arménie (6 mai 2012) :

Projet de décision : *approuver la composition de la commission ad hoc et en désigner un/e Président(e) (sous réserve de la réception d'une invitation).*

iv. Elections législatives en Serbie (mai 2012) :

Projet de décision : *approuver la composition de la commission ad hoc et en désigner un/e Président(e) (sous réserve de la réception d'une invitation et confirmation de la date).*

v. Elections pour le Conseil Législatif Palestinien et pour la Présidence de l'Autorité Palestinienne:

Projet de décision *: approuver la composition de la commission ad hoc et en désigner un/e Président(e) (sous réserve de la réception d'une invitation et confirmation de la date).*

8. Renvois et transmissions en commissions
[AS/Bur (2012) 15]

Projet de décision : *approuver les propositions contenues dans le document.*

9. Suivi de la Résolution 1842 (2011) sur les mandats des commissions de l'Assemblée parlementaire – mise en œuvre de la Résolution 1822 (2011) sur la réforme de l'Assemblée parlementaire
[AS/Bur (2012) 19]

. Mandats des rapporteurs généraux

Projet de décision : *approuver les mandats des rapporteurs généraux sur la base des propositions soumises par les commissions.*

10. Prix des droits de l'homme de l'Assemblée Parlementaire
[AS/Bur (2012) 18]

. Composition du jury

Projet de décision : *approuver les propositions contenues dans le document.*

11. Questions soulevées par les commissions

i. Commission du règlement, des immunités et des affaires institutionnelles

. Suivi de la Résolution 1583 (2007) « Améliorer la participation des membres aux sessions plénières de l'Assemblée et aux réunions des commissions »
[Lettre du Président de la Commission du règlement, des immunités et des affaires institutionnelles, AS/Pro (2012) 02 def.]

Projet de décision : *approuver les propositions contenues dans le document.*

ii. Commission des affaires juridiques et des droits de l'homme
[Lettre du Président de la Commission des affaires juridiques et des droits de l'homme]

. Demande pour une sous-commission ad hoc pour participer à la conférence du comité mixte des droits de l'homme « Combler le déficit démocratique dans le domaine des droits de l'homme – Comment renforcer le rôle des parlements sous l'angle des droits de l'homme » (Londres, 17-18 avril 2012)

Projet de décision : *autoriser la sous-commission ad hoc de participer à cette conférence.*

12. Forum mondial de la démocratie (8-12 octobre 2012)
[AS/Bur (2012) 20]

. Constitution d'une commission ad hoc

Projet de décision : *constituer une commission ad hoc pour participer au Forum.*

13. Divers

Points à traiter éventuellement sans débat :

14. Dates des parties de sessions de l'Assemblée (2014 - 2016)
[AS/Bur (2012) 16]

Projet de décision : *approuver le mémorandum préparé par le Secrétariat de l'Assemblée*

15. Composition de la Commission de suivi et de la Commission du Règlement, des immunités et des questions institutionnelles
[Listes de membres]

Projet de décision : *approuver les listes de membres*

16. Représentation institutionnelle de l'Assemblée Parlementaire en 2012
[AS/Bur (2012) 04 addendum]

. ***Projet de décision*** : *approuver les propositions contenues dans l'addendum*

17. Représentants de l'Assemblée à des activités officielles

i. Désignation de représentants de l'Assemblée à des activités officielles
[AS/Bur/Inf (2012) 02]

. ***Projet de décision*** : *approuver les propositions contenues dans le document*

18. Réunions en dehors de Strasbourg et de Paris
[AS/Bur (2012) 17]

. ***Projet de décision*** : *approuver les propositions contenues dans le document*

19. Date et lieu des prochaines réunions

. Strasbourg, lundi 23 avril 2012 à 8h00 ;
. Strasbourg, vendredi 27 avril 2012 à 8h30 ;
. Tirana, jeudi 24 mai 2012 à 15h

Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

AS/Bur (2012) 13
6 March 2012

Preliminary draft agenda

2nd part of the 2012 Ordinary Session
(23-27 April 2012)

drawn up by the Bureau of the Assembly on 27 January 2012

Modifications to be submitted to the Bureau on 8 March 2012

(modifications are indicated in grey)

F – 67075 Strasbourg Cedex | assembly@coe.int | Tel: +33 3 88 41 2000 | Fax: +33 3 88 41 2733

Monday 23 April 2012

8 a.m. Bureau of the Assembly

9.30 a.m. Political groups

11.30 a.m. 1. Opening of the second part of the 2012 Ordinary Session

a. Statement by the President
b. Examination of new credentials (Doc.)
c. Election of Vice-Presidents of the Assembly
d. Changes in the membership of committees (Commissions (2012) ...)
e. Request(s) for current affairs debate or debate under urgent procedure
f. Adoption of the agenda
g. Approval of the minutes of proceedings of the Standing Committee (Paris, 9 March 2012)

2. Progress report of the Bureau of the Assembly and the Standing Committee (Doc.)
Rapporteur: Ms Liliane Maury Pasquier (Switzerland, SOC)

Observation of the presidential election in the Russian Federation (4 March 2012) (Doc.)
Rapporteur of the Ad hoc Committee of the Bureau: Mr Tiny Kox (Netherlands, UEL)

Debate and [possibly] vote

1 p.m. End of the sitting

2 p.m. Committees

3 p.m. 1. Communication from the Committee of Ministers to the Parliamentary Assembly, presented by the Rt Hon. David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, United Kingdom, representing the Chairmanship of the Committee of Ministers
Questions (Doc.)
Deadline for tabling written questions: Monday 16 April at 11.30 a.m.

4 p.m. 2. Free debate[1]

5 p.m. End of the sitting

5.10 p.m. Political groups

[1] See Rule 38 of the Assembly's Rules of Procedure.

Tuesday 24 April 2012

8.30 a.m. Committees

10 a.m. **1.** **[Possibly] Election of judges to the European Court of Human Rights (Doc.)**
(from 10 a.m. to 1 p.m.)

2. **Lives lost in the Mediterranean Sea: who is responsible? (Doc.)**
Rapporteur of the Committee on Migration, Refugees and Displaced Persons:
Ms Tineke Strik (Netherlands, SOC)
Deadline for tabling amendments: Monday 23 April at 4 p.m.

Debate and vote on ...

12 noon **3.** **Address by an invited personality** [tbc]
Questions

1 p.m. **End of the sitting**

2 p.m. Committees

4 p.m. **1.** **[Possibly] Election of judges to the European Court of Human Rights (Doc.)**
(continued) (from 3.30 p.m. to 5 p.m.)

2. **Gender equality and the status of women in the Council of Europe southern neighbourhood (Doc.)**
Rapporteur of the Committee on Equality and Non-Discrimination:
Ms Fatiha Saïdi (Belgium, SOC)
Deadline for tabling amendments: Monday 23 April at 4 p.m.

Statement by ... [tbc]

Debate and vote on ...

~~**Muslim women in Europe: for equal opportunities (Doc.)**~~
~~*Rapporteur of the Committee on Equality and Non-Discrimination:*~~
~~*Ms Athina Kyriakidou (Cyprus, SOC)*~~
~~*Rapporteur of the Committee on Migration, Refugees and Displaced Persons (for opinion) (Doc.): Ms Tülin Erkal Kara (Turkey, EPP/CD)*~~
~~*Rapporteur of the Committee on Culture, Science, Education and Media (for opinion) (Doc.): Mr Raphaël Comte (Switzerland, ALDE)*~~

3. **The promotion of active citizenship in Europe (Doc.)**
Rapporteur of the Committee on Political Affairs and Democracy:
Earl of Dundee (United Kingdom, EDG)
Deadline for tabling amendments: Monday 23 April at 4 p.m.

Debate and vote on ...

8 p.m. **End of the sitting**

Wednesday 25 April 2012

8.30 a.m. Political groups

10 a.m. **1.** **[Possibly 2nd round] Election of judges to the European Court of Human Rights (Doc.)** (from 10 a.m. to 1 p.m.)

2.a. **Good governance and ethics in sport (Doc.)**
Rapporteur of the Committee on Culture, Science, Education and Media:
Mr François Rochebloine (France, EPP/CD)
Deadline for tabling amendments: Tuesday 24 April at 10.30 a.m.

2.b. **The need to combat match-fixing (Doc.)**
Rapporteur of the Committee on Culture, Science, Education and Media:
Ms Anne Brasseur (Luxembourg, ALDE)
Deadline for tabling amendments: Tuesday 24 April at 10.30 a.m.

~~**Statement by ... Mr Michel Platini, President of the Union of European Football Associations (UEFA)**~~

Joint debate
Vote on... (Doc.)
Vote on... (Doc.)

12 noon **End of the sitting**

12 noon – 1 p.m. **Joint committee**

2 p.m. Committees

3.30 p.m. **1.** **The protection of freedom of expression and information on the Internet and online media (Doc. 12874)**
Rapporteur of the Committee on, Culture, Science, Education and Media:
Ms Zaruhi Postanjyan (Armenia, EPP/CD)
Deadline for tabling amendments: Tuesday 24 April at 4 p.m.

Debate and votes on a draft resolution and a draft recommendation

~~**Families' right to freedom of choice in education in Europe (Doc.)**~~
~~*Rapporteur of the Committee on Culture, Science, Education and Media:*~~
~~*Ms Carmen Quintanilla (Spain, EPP/CD)*~~

8 p.m. **End of the sitting**

Thursday 26 April 2012

8.30 a.m.		Committees
10 a.m.	**1.**	**[Possibly] Debate under urgent procedure or current affairs debate**[2]
		<u>OR</u>
		...
12 noon	**2.**	**Address by an invited personality** [tbc] Questions
1 p.m.		**End of the sitting**
2 p.m.		Committees
3.30 p.m.	**1.**	**The situation of IDPs and returnees in the North Caucasus region (Doc. 12882)** *Rapporteur of the Committee on Migration, Refugees and Displaced Persons:* *Mr Nikolaos Dendias (Greece, EPP/CD)* *Rapporteur of the Committee on Legal Affairs and Human Rights (for opinion) (Doc.):* *Ms Marieluise Beck (Germany, ALDE)* Deadline for tabling amendments: Wednesday 25 April at 4 p.m. Debate and vote on a draft resolution
		~~**The functioning of democratic institutions in the Republic of Moldova (Doc.)**~~ ~~*Co-rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee):*~~ ~~*Ms Lise Christoffersen (Norway, SOC) and Mr Piotr Wach (Poland, EPP/CD)*~~
	2.	**Follow-up by the Committee of Ministers to the work of the Parliamentary Assembly (Doc.)** *Rapporteur of the Committee on Rules of Procedure, Immunities and Institutional Affairs:* *Mr Serhiy Holovaty (Ukraine, ALDE)* Deadline for tabling amendments: Wednesday 25 April at 4 p.m. Debate and vote on ...
7.30 p.m.		**End of the sitting**

[2] If the urgent procedure/a current affairs debate is decided by the Assembly.

Friday 27 April 2012

8.30 a.m. Bureau of the Assembly

10 a.m. **1.** **Promoting an appropriate policy on tax havens (Doc.)**
Rapporteur of the Committee on Social Affairs, Health and Sustainable Development: Mr Dirk Van der Maelen (Belgium, SOC)
Deadline for tabling amendments: Thursday 26 April at 10.30 a.m.

Debate and vote on ...

~~**The situation of IDPs and returnees in the North Caucasus regions (Doc.)**~~
~~*Rapporteur of the Committee on Migration, Refugees and Displaced Persons: Mr Nikolaos Dendias (Greece, EPP/CD)*~~
~~*Rapporteur of the Committee on Legal Affairs and Human Rights (for opinion) (Doc.): Ms Marieluise Beck (Germany, ALDE)*~~

2. **Decent pensions for all following the economic and financial crisis (Doc.)**
Rapporteur of the Committee on Social Affairs, Health and Sustainable Development: Mr Denis Jacquat (France, EPP/CD)
Deadline for tabling amendments: Thursday 26 April at 10.30 a.m.

Debate and vote on ...

1 p.m. **Closure of the second part of the 2012 Ordinary Session**

Provisional edition

An additional protocol to the European Convention on Human Rights on national minorities

Recommendation 1994 (2012)[1]

1. Referring to its Resolution 1866 (2012) on an additional protocol to the European Convention on Human Rights on national minorities, the Parliamentary Assembly recommends that the Committee of Ministers:

   1.1. consider drafting an additional protocol to the European Convention on Human Rights providing for minimum rights for national minorities; such a protocol could contain the minimum rights mentioned in paragraph [6] of Resolution 1866 (2012);

   1.2. pursue co-operation with other international organisations, in particular the Organisation for Security and Co-operation in Europe (OSCE) and the United Nations, with a view to maintaining coherent standards for the protection of national minorities.

[1] *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 9 March 2012 (see Doc. 12879, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Frunda).

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Provisional edition

An additional protocol to the European Convention on Human Rights on national minorities

Resolution 1866 (2012)[1]

1. The Parliamentary Assembly stresses the importance of the protection of persons belonging to national minorities as an integral part of the international protection of human rights to ensure equality, justice, stability, democratic security and peace in Europe.

2. The Assembly regrets that the main Council of Europe instruments for the protection of the rights of national minorities, such as the Framework Convention for the Protection of National Minorities (ETS No. 157) and the European Charter for Minority or Regional Languages (ETS No. 148) have not been ratified by all the member States. Moreover, in its previous resolutions (such as Resolution 1713 (2010) "Minority protection in Europe: best practices and deficiencies in implementation of common standards" and Recommendation 1944 (2010) on the European Charter for Regional or Minority Languages), it has found numerous shortcomings in the implementation of these conventions.

3. The Assembly also deplores the limited number of ratifications of Protocol No. 12 to the European Convention on Human Rights (ETS No. 177), which broadens the scope of the prohibition of discrimination set forth in the European Convention on Human Rights (ETS No. 5, hereafter "the Convention") and which may be an important tool in combating discrimination based on "association with a national minority".

4. On several occasions, the Assembly has supported the adoption of an additional protocol to the Convention in order to reinforce the protection of the rights of national minorities in Europe. In particular, its Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights contained a draft for such a protocol. However, to the Assembly's regret, the Committee of Ministers decided in 1996 not to follow up this recommendation.

5. Considering the precarious situation of numerous national minority groups in Europe, it is time to reconsider the Assembly's previous proposals concerning the adoption of an additional protocol to the European Convention on Human Rights, which could reinforce the standing of national minorities, both as individuals and/or as groups, before the European Court of Human Rights and provide them with substantive and justiciable rights.

6. The Assembly considers that such a protocol could refer to the internationally recognised criteria laid down in the Copenhagen Document adopted in 1990 by the Organization for Security and Co-operation in Europe (OSCE) and the relevant texts of the Council of Europe, in particular the Framework Convention for the Protection of National Minorities, the European Charter for Minority or Regional Languages and Assembly Recommendations 1134 (1990), 1201 (1993), 1255 (1995), 1492 (2001) and 1623 (2003) and Resolution 1713 (2010). It could guarantee the following minimum standards for national minorities and their members:

6.1. the right of every person to express freely his or her belonging to a national minority;

6.2. political rights (such as freedom of association, the creation of political parties, participation in elections, representation in public bodies, at both national and regional level);

[1] *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 9 March 2012 (see Doc. 12879, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Frunda).
See also Recommendation 1994 (2012).

6.3. cultural rights, including the right to cultural autonomy to preserve national identity;

6.4. the right to take decisions on different forms of autonomy, in accordance with European practice and national or regional traditions;

6.5. the right to freely use a minority language in private and public life, especially in relations with the administrative authorities or the judicial system in areas where national minorities reside traditionally or represent a significant percentage of the regional or local population.

7. Moreover, the Assembly calls on those member States which have not yet done so, to sign and/or ratify the Framework Convention for the Protection of National Minorities, the European Charter for Minority or Regional Languages and Protocol No. 12 to the European Convention on Human Rights, without reservations or restrictive declarations.

8. The Assembly calls on national parliaments and their members to actively promote, both within their parliaments and vis-à-vis their governments, the idea of adopting an additional protocol to the European Convention on Human Rights in this context.

Provisional edition

The need for independent and credible expert assessments

Resolution 1870 (2012)[1]

1. Recent events have highlighted the vital need for independent, impartial expert assessments in fields such as the environment, health, energy, finance or civil protection.

2. Too many expert assessments are based on causal hypotheses, some of whose repercussions are unknown. Experts therefore lack the requisite distance to gauge the medium- and long-term impacts on the environment and human health.

3. In this connection, the Parliamentary Assembly notes that the findings of these assessments vary according to the source of funding, and that this approach can be different when assessments are made after incidents, when the implications are economic, financial and possibly political.

4. The Assembly regrets that economic interests and the lack of full, transparent information has led to many health-care scandals (contaminated blood, growth hormones, asbestos, etc), which have had serious repercussions on human health.

5. The Assembly considers that a legal framework could help reinforce the credibility of expert assessments by preventing external pressure.

6. The Assembly considers that if expert assessments are to be transparent and independent, they must be the subject of a debate in which all the different points of view can be expressed, and it would strongly advise involving representatives of universities, scientific and technological research circles and non-governmental organisations, either as experts or as observers.

7. The Assembly also stresses the need to ensure traceability of expert assessments as a means of ensuring their independence.

8. The Assembly consequently invites the governments of member and non-member States of the Council of Europe to:

   8.1. call on the services of independent experts, particularly in fields requiring in-depth scientific and technical expertise;

   8.2. set up a public fund to finance so-called "sensitive" expert assessments;

   8.3. draw up a handbook of good practice and set up a high-level multidisciplinary committee responsible for ensuring compliance with ethical rules;

   8.4. establish a system of consultation with representatives of civil society;

   8.5. prevent conflicts of interests, particularly vis-à-vis so-called "sensitive" expert assessments, by means of a declaration;

[1] *Text adopted by the Standing Committee*, acting on behalf of the Assembly, on 9 March 2012 (see Doc. 12873, report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Mr Preda).

8.6. introduce an assessment traceability system in order to enhance transparency and independence;

8.7. ensure proper follow-up of the consequences of expert assessment conclusions;

8.8. systematically disseminate expert assessment conclusions;

8.9. set up joint committees for transfrontier expert assessments;

8.10. adopt procedures for ensuring transparency and public information.

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Committee on Legal Affairs and Human Rights

Draft fourth additional protocol to the European Convention on Extradition (ETS No. 24)[1]

Draft report

Rapporteur: Mr Tudor Panţiru, Romania, Socialist Group

I. Preliminary draft opinion

The Parliamentary Assembly fully supports the Draft fourth Additional Protocol to the European Convention on Extradition and sees no need to propose any changes.

II. Explanatory memorandum by Mr Panţiru, rapporteur

1. The Committee of Ministers, on 20 December 2011, invited the Assembly to present an opinion on the Draft fourth Additional Protocol to the European Convention on Extradition.[2]

2. The Assembly is aware of the sensitive nature of extradition cases and fully recognises the problems which may be encountered in dealing with such cases and which may involve the eventual removal of individuals to a foreign jurisdiction. Extradition cases may therefore raise human rights issues.

3. The Assembly dealt with extradition issues before, in particular in cases where a possible political motivation of the underlying criminal prosecution was alleged. It called on states to "refuse extradition whenever there are reasons to believe that the person concerned is unlikely, for political reasons, to be given a fair trial in the requesting state".[3] In a recent resolution on human rights and the fight against terrorism, it also stressed the importance of the *non-refoulement* principle, in particular in the context of interim measures under Rule 39 of the Rules of the European Court of Human Rights and expressed its concern about reliance on diplomatic assurances.[4]

4. Moreover, the European Court of Human Rights has confirmed that, under the European Convention on Human Rights ("ECHR"), aliens admitted to a state have no right not to be extradited.[5] The Court has held that, in general, extradition proceedings do not fall under the ambit of Article 6 of the ECHR: "[...] decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil

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[1] See Doc 12818.
[2] See Doc 12818 and ETS No. 024 (1957) (see http://conventions.coe.int/Treaty/EN/Treaties/Html/024.htm for text).
[3] Resolution 1685 (2009) on "Allegations of politically-motivated abuses of the criminal justice system in Council of Europe member states", available at:
http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1685.htm.
[4] See Resolution 1840 (2011) on "Human Rights and the Fight against Terrorism", available at:
http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1840.htm.
[5] *Chahal v. the United Kingdom*, Application No. 22414/93, judgment of 15 November 1996; *X v. Belgium*, Application No. 7256/75, judgment of 10 December 1976, page 1.65. However, extradition of a person where there is a serious risk that they will be subjected to torture or inhuman or degrading treatment would be a violation of Article 3 according to *Soering v. the United Kingdom*, Application No. 14038/88, judgment of 7 July 1989, paragraph 31.

rights or obligations or of a criminal charge against him, within the meaning of Article 6(1) of the [ECHR]."[6] However, the Court has also recognised that "an issue might exceptionally be raised under Article 6 by an extradition decision in circumstances where the fugitive has suffered or risks suffering a flagrant denial of a fair trial in the requesting country".[7] The recent judgment of the European Court on Human Rights in the *Abu Qatada* case concerns such a situation and, once again, highlights the intrinsic link between human rights and extradition.[8]

5. Otherwise, it is the detention of persons with a view to extradition, which is of particular relevance. Under Article 5(1)(f) of the ECHR, the lawful arrest or detention of a person against whom action is being taken with a view to extradition is permitted.[9] This sub-article does not impose an obligation on member states to establish a specific time limit for detention pending extradition. However, detention under Article 5(1)(f) should not be arbitrary, and in this respect, the length of detention "should not exceed that reasonably required for the purpose pursued".[10] The Court has held that the principle of proportionality applies to detention under Article 5 (1)(f) to the extent that the detention should not continue for an unreasonable length of time; thus, it held that "any deprivation of liberty under Article 5 (1)(f) will be justified only for as long as deportation proceedings are in progress". [11] Otherwise, the duration of the detention will be considered excessive.

6. The European Convention on Extradition dates from 1957 and is one of the oldest European Conventions in the field of criminal law. It was recently supplemented by a third additional protocol, providing a treaty basis for simplified extradition procedures. This protocol was received favourably by the Assembly.[12]

7. The underlying rationale to extradition procedures is that extradition relations between states having comparable legal orders and sharing the same values should be closer and more flexible, with less need for exceptions and safeguards.[13] To this effect, within the European Union, the European arrest warrant, adopted in 2002 in the form of a Framework Decision which had to be transposed by EU member states by 31 December 2003, replaced, within its area of application, the traditional extradition system by requiring the executing national judicial authorities to recognise, *ipso facto*, and with a minimum of formalities, requests for the surrender of a person made by the issuing judicial authority of another EU member state.[14] The draft fourth protocol takes these developments into account.

8. The principal aim of the draft fourth protocol is to modernise a number of provisions of the Convention, taking into account the evolution of international co-operation in criminal matters since the entry into force of the Convention and its earlier additional protocols. To this end, it replaces the current provisions on lapse of time (Article 10 of the Convention), on request and supporting documents (Article 12 of the Convention), on the rule of speciality (Article 14 of the Convention), and on transit (Article 21 of the Convention). It adds supplementary rules to the provisions on re-extradition to a third state (Article 15 of the Convention), on channels and means of communication and on friendly settlement. Finally, it defines the protocol's relationship with the Convention and other international instruments.

9. Overall, the proposed changes have been carefully drafted by the European Committee on Crime Problems under the authority of the Committee of Ministers and are well reasoned. They should indeed serve the purpose of streamlining and modernising the 1957 Convention and thus be welcomed entirely.

[6] *Mamatkulov and Askarov v. Turkey*, Applications Nos. 46827/99 and 46951/99, judgment of 4 February 2005 at paragraph 82. See also *Maaouia v. France*, Application No. 39652/98, 5 October 2000.
[7] *Soering v. the United Kingdom*, paragraph 113.
[8] *Othman (Abu Qatada)* v. *the United Kingdom*, application no. 8139/09, judgment of 17 January 2012.
[9] *Chahal v. the United Kingdom*, paragraph 112.
[10] *Saadi v. the United Kingdom*, Application No. 13229/03, judgment of 29 January 2008, paragraphs 73 and 74.
[11] *Chahal v. the United Kingdom*, paragraph113.
[12] See Opinion 278 (2010), available at: http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta10/EOPI278.htm.
[13] See Stein, "Extradition", Max Planck Encyclopedia of Public International Law 2012, paragraph 60, available at: http://www.mpepil.com/ViewPdf/epil/entries/law-9780199231690-e797.pdf?stylesheet=EPIL-display-full.xsl.
[14] See 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJEU L 190, 18/07/2002, pp. 1 – 20, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:EN:HTML.

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Doc. 12818
11 January 2012

Draft fourth additional protocol to the European Convention on Extradition (ETS No. 24)

Request for an opinion
from the Committee of Ministers

Contents

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Letter from the Secretary to the Committee of Ministers to the Secretary General of the Parliamentary Assembly of 20 December 2011

I enclose herewith the draft Fourth Additional Protocol to the European Convention on Extradition (ETS No. 24) (Appendix to document CM(2011)118) and its Explanatory Report (document CM(2011)118 add) for opinion by the Parliamentary Assembly on the draft Additional Protocol, as agreed by the Ministers' Deputies at their 1123rd meeting (121 October 2011, item 10.2, European Committee on Crime Problems (CDPC) - a. Abridged report of the 60th plenary session (Strasbourg, 14-17 June 2011) - b. Draft Fourth Additional Protocol to the European Convention on Extradition and its Explanatory Report - Transmission to the Parliamentary Assembly for opinion).

[Signed]

Mireille Paulus
Secretary to the Committee of Ministers

Draft Fourth Additional Protocol to the European Convention on Extradition

The member States of the Council of Europe, signatory to this Protocol,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Desirous of strengthening their individual and collective ability to respond to crime;

Having regard to the provisions of the European Convention on Extradition (ETS No. 24) opened for signature in Paris on 13 December 1957 (hereinafter referred to as "the Convention"), as well as the three additional protocols thereto (ETS Nos. 86 and 98, CETS No. 209), done at Strasbourg on 15 October 1975, on 17 March 1978 and on 10 November 2010, respectively;

Considering it desirable to modernise a number of provisions of the Convention and supplement it in certain respects, taking into account the evolution of international co-operation in criminal matters since the entry into force of the Convention and the additional protocols thereto;

Have agreed as follows:

Article 1 – Lapse of time

Article 10 of the Convention shall be replaced by the following provisions:

"Lapse of time

1. Extradition shall not be granted when the prosecution or punishment of the person claimed has become statute-barred according to the law of the requesting Party.

2. Extradition shall not be refused on the ground that the prosecution or punishment of the person claimed would be statute-barred according to the law of the requested Party.

3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right not to apply paragraph 2:

a. when the request for extradition is based on offences for which that State has jurisdiction under its own criminal law; and/or

b. if its domestic legislation explicitly prohibits extradition when the prosecution or punishment of the person claimed would be statute-barred according to its law.

4. When determining whether prosecution or punishment of the person sought would be statute-barred according to its law, any Party having made a reservation pursuant to paragraph 3 of this Article shall take into consideration, in accordance with its law, any acts or events that have occurred in the requesting Party, in so far as acts or events of the same nature have the effect of interrupting or suspending time-limitation in the requested Party."

Article 2 – The request and supporting documents

1. Article 12 of the Convention shall be replaced by the following provisions:

"The request and supporting documents

1. The request shall be in writing. It shall be submitted by the Ministry of Justice or other competent authority of the requesting Party to the Ministry of Justice or other competent authority of the requested Party. A State wishing to designate another competent authority than the Ministry of Justice shall notify the Secretary General of the Council of Europe of its competent authority at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, as well as of any subsequent changes relating to its competent authority.

2. The request shall be supported by:

a. a copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;

b. a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions, including provisions relating to lapse of time, shall be set out as accurately as possible; and

c. a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his or her identity, nationality and location."

2. Article 5 of the Second Additional Protocol to the Convention shall not apply as between Parties to the present Protocol.

Article 3 – Rule of speciality

Article 14 of the Convention shall be replaced by the following provisions:

"Rule of speciality

1. A person who has been extradited shall not be arrested, prosecuted, tried, sentenced or detained with a view to the carrying out of a sentence or detention order, nor shall he or she be for any other reason restricted in his or her personal freedom for any offence committed prior to his or her surrender other than that for which he or she was extradited, except in the following cases:

a. when the Party which surrendered him or her consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Convention. The decision shall be taken as soon as possible and no later than 90 days after receipt of the request for consent. Where it is not possible for the requested Party to comply with the period provided for in this paragraph, it shall inform the requesting Party, providing the reasons for the delay and the estimated time needed for the decision to be taken;

b. when that person, having had an opportunity to leave the territory of the Party to which he or she has been surrendered, has not done so within 30 days of his or her final discharge, or has returned to that territory after leaving it.

2. The requesting Party may, however:

a. carry out pre-trial investigations, except for measures restricting the personal freedom of the person concerned;

b. take any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time;

c. take any measures necessary to remove the person from its territory.

3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession or at any later time, declare that, by derogation from paragraph 1, a requesting Party which has made the same declaration may, when a request for consent is submitted pursuant to paragraph 1.a, restrict the personal freedom of the extradited person, provided that:

a. the requesting Party notifies, either at the same time as the request for consent pursuant to paragraph 1.a, or later, the date on which it intends to apply such restriction; and

b. the competent authority of the requested Party explicitly acknowledges receipt of this notification.

The requested Party may express its opposition to that restriction at any time, which shall entail the obligation for the requesting Party to end the restriction immediately, including, where applicable, by releasing the extradited person.

4. When the description of the offence charged is altered in the course of proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition."

Article 4 – Re-extradition to a third state

The text of Article 15 of the Convention shall become paragraph 1 of that article and shall be supplemented by the following second paragraph:

"2. The requested Party shall take its decision on the consent referred to in paragraph 1 as soon as possible and no later than 90 days after receipt of the request for consent, and, where applicable, of the documents mentioned in Article 12, paragraph 2. Where it is not possible for the requested Party to comply with the period provided for in this paragraph, it shall inform the requesting Party, providing the reasons for the delay and the estimated time needed for the decision to be taken."

Article 5 – Transit

Article 21 of the Convention shall be replaced by the following provisions:

"Transit

1. Transit through the territory of one of the Contracting Parties shall be granted on submission of a request for transit, provided that the offence concerned is not considered by the Party requested to grant transit as an offence of a political or purely military character having regard to Articles 3 and 4 of this Convention.

2. The request for transit shall contain the following information:

a. the identity of the person to be extradited, including his or her nationality or nationalities when available;

b. the authority requesting the transit;

c. the existence of an arrest warrant or other order having the same legal effect or of an enforceable judgment, as well as a confirmation that the person is to be extradited;

d. the nature and legal description of the offence, including the maximum penalty or the penalty imposed in the final judgment;

e. a description of the circumstances in which the offence was committed, including the time, place and degree of involvement of the person sought.

3. In the event of an unscheduled landing, the requesting Party shall immediately certify that one of the documents mentioned in Article 12, paragraph 2.a exists. This notification shall have the effect of a request for provisional arrest as provided for in Article 16, and the requesting Party shall submit a request for transit to the Party on whose territory this landing has occurred.

4. Transit of a national, within the meaning of Article 6, of a country requested to grant transit may be refused.

5. A State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right to grant transit of a person only on some or all of the conditions on which it grants extradition.

6. The transit of the extradited person shall not be carried out through any territory where there is reason to believe that his or her life or freedom may be threatened by reason of his or her race, religion, nationality or political opinion."

Article 6 – Channels and means of communication

The Convention shall be supplemented by the following provisions:

"Channels and means of communication

1. For the purpose of the Convention, communications may be forwarded by using electronic or any other means affording evidence in writing, under conditions which allow the Parties to ascertain their authenticity. In any case, the Party concerned shall, upon request and at any time, submit the originals or authenticated copies of documents.

2. The use of the International Criminal Police Organization (Interpol) or of diplomatic channels is not excluded.

3. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that, for the purpose of Article 12 and Article 14, paragraph 1.a, of the Convention it reserves the right to require the original or authenticated copy of the request and supporting documents."

Article 7 – Relationship with the Convention and other international instruments

1. The words and expressions used in this Protocol shall be interpreted within the meaning of the Convention. As regards the Parties to this Protocol, the provisions of the Convention shall apply, mutatis mutandis, to the extent that they are compatible with the provisions of this Protocol.

2. The provisions of this Protocol are without prejudice to the application of Article 28, paragraphs 2 and 3, of the Convention concerning the relations between the Convention and bilateral or multilateral agreements.

Article 8 – Friendly settlement

The Convention shall be supplemented by the following provisions:

"Friendly settlement

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of the Convention and the additional protocols thereto and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of their interpretation and application."

Article 9 – Signature and entry into force

1. This Protocol shall be open for signature by the member States of the Council of Europe which are Parties to or have signed the Convention. It shall be subject to ratification, acceptance or approval. A signatory may not ratify, accept or approve this Protocol unless it has previously ratified, accepted or approved the Convention, or does so simultaneously. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the deposit of the third instrument of ratification, acceptance or approval.

3. In respect of any signatory State which subsequently deposits its instrument of ratification, acceptance or approval, this Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit.

Article 10 – Accession

1. Any non-member State which has acceded to the Convention may accede to this Protocol after it has entered into force.

2. Such accession shall be effected by depositing an instrument of accession with the Secretary General of the Council of Europe.

3. In respect of any acceding State, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of accession.

Article 11 – Temporal scope

This Protocol shall apply to requests received after the entry into force of the Protocol between the Parties concerned.

Article 12 – Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2. Any State may, at any later time, by declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date or receipt of such notification by the Secretary General.

Article 13 – Declarations and reservations

1. Reservations made by a State to the provisions of the Convention and the additional protocols thereto which are not amended by this Protocol shall also be applicable to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. The same shall apply to any declaration made in respect or by virtue of any provision of the Convention and the additional protocols thereto.

2. Reservations and declarations made by a State to any provision of the Convention which is amended by this Protocol shall not be applicable as between the Parties to this Protocol.

3. No reservation may be made in respect of the provisions of this Protocol, with the exception of the reservations provided for in Article 10, paragraph 3, Article 21, paragraph 5, of the Convention as amended by this Protocol, and Article 6, paragraph 3, of this Protocol. Reciprocity may be applied to any reservation made.

4. Any State may wholly or partially withdraw a reservation or declaration it has made in accordance with this Protocol, by means of a notification addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

Article 14 – Denunciation

1. Any Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General of the Council of Europe.

3. Denunciation of the Convention automatically entails denunciation of this Protocol.

Article 15 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and any State which has acceded to this Protocol of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance, approval or accession;

c. any date of entry into force of this Protocol in accordance with Articles 9 and 10;

d. any reservation made in accordance with Article 10, paragraph 3, and Article 21, paragraph 5, of the Convention as amended by this Protocol, as well as Article 6, paragraph 3, of this Protocol, and any withdrawal of such a reservation;

e. any declaration made in accordance with Article 12, paragraph 1, and Article 14, paragraph 3, of the Convention as amended by this Protocol, as well as Article 12 of this Protocol, and any withdrawal of such a declaration;

f. any notification received in pursuance of the provisions of Article 14 and the date on which denunciation takes effect;

g. any other act, declaration, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at [Strasbourg], this [...] day of [...], in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the non-member States which have acceded to the Convention.

Explanatory report to the draft protocol

I. The Fourth Additional Protocol to the European Convention on Extradition, drawn up within the Council of Europe by the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC), under the authority of the European Committee on Crime Problems (CDPC), has been opened for signature by the member states of the Council of Europe, in ...., on ...., on the occasion of the ....

II. The text of this explanatory report, prepared on the basis of that Committee's discussions and submitted to the Committee of Ministers of the Council of Europe, does not constitute an instrument providing an authoritative interpretation of the text of the Additional Protocol although it may facilitate the understanding of its provisions.

Introduction

1. Under the authority of the European Committee on Crime Problems (CDPC), the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) is entrusted, in particular, with examining the functioning and implementation of Council of Europe conventions and agreements in the field of international co-operation in criminal matters, with a view to adapting them and improving their practical application where necessary.

2. The need for the modernisation of the legal instruments of the Council of Europe in the criminal justice field, including the European Convention on Extradition (hereinafter referred to as "the Convention"), in order to enhance international co-operation, has been highlighted on several occasions. In particular, the "New Start" report (PC-S-NS (2002) 7), presented to the CDPC by the Reflection Group on developments in international co-operation in criminal matters and approved by the CDPC in June 2002, pointed to the necessity of realising a European area of shared justice. The Warsaw declaration and the Plan of Action adopted by the Third Summit of Council of Europe Heads of State and Government of the member states of the Council of Europe (Warsaw, 16-17 May 2005) underlined the commitment, at the highest political level, to making full use of the Council of Europe's standard-setting potential and to promoting implementation and further development of the Organisation's legal instruments and mechanisms of legal co-operation.

3. At the High-Level Conference of the Ministries of Justice and of the Interior entitled "Improving European Co-operation in the Criminal Justice Field" held in Moscow (Russian Federation) on 9 and 10 November 2006, the Council of Europe was encouraged to continue its efforts to improve the operation of the main conventions regulating international co-operation in criminal matters, in particular those regarding extradition, in order to identify the difficulties encountered and to consider the need for any new instruments.

4. At its 52nd meeting (October 2006), the PC-OC put forward a number of proposals relating to the modernisation of the European Convention on Extradition, as amended by the two additional protocols thereto of 1975 and 1978. The Convention, which dates from 1957, is indeed one of the oldest European conventions in the criminal law field and has a direct impact on individuals' rights and freedoms, to which the CDPC asked the PC-OC to pay particular attention.

5. In this context, the PC-OC suggested, on the one hand, to complement the Convention in order to provide a treaty basis for simplified extradition procedures, and, on the other hand, to amend a number of provisions of the Convention in order to adapt it to modern needs. These provisions concerned, inter alia, the issues of lapse of time, rule of speciality and channels and means of communication.

6. The CDPC, at its 56th plenary session (June 2007), decided to mandate the PC-OC, to draft the necessary legal instruments for this purpose. Having studied various options, the PC-OC agreed to draw up two additional protocols to the Convention, a Third Additional Protocol providing for simplified extradition procedures by complementing the Convention, and a Fourth Additional Protocol amending and supplementing certain provisions of the Convention. The present Fourth Additional Protocol was finalised by the PC-OC at its 60th meeting (17 to 19 May 2011) and submitted to the CDPC for approval.

7. The drafts of the Fourth Additional Protocol and the Explanatory Report thereto were examined and approved by the CDPC at its 60th plenary session (14 to 17 June 2011) and submitted to the Committee of Ministers.

8. At the ...th meeting of their Deputies on [date], the Committee of Ministers adopted the text of the Fourth Additional Protocol and decided to open it for signature, in [place] on [date].

Commentaries on the Articles of the Fourth Additional Protocol

Article 1 – Lapse of time

9. This Article is intended to replace the original Article 10 of the Convention which established lapse of time, under the law either of the requested Party or the requesting Party, as a mandatory ground for refusal. The current text takes account of changes that occurred as regards international co-operation in criminal matters since the opening to signature of the Convention in 1957, and notably the relevant provision of the Convention of 23 October 1996 relating to extradition between the member states of the European Union (Article 8).

10. The modified Article draws a distinction concerning immunity by reason of lapse of time from prosecution or punishment, depending on whether it obtains according to the law of the requesting or the requested Party.

11. As regards the law of the requesting Party, lapse of time remains a mandatory ground for refusal in accordance with paragraph 1 of this Article. The drafters considered excluding this as a ground for refusal, given that the requesting Party should, as a matter of course, not request the extradition of a person whose prosecution or punishment is statute-barred under its own law. However, they decided to keep this ground for refusal for the rare cases where a Party fails to withdraw an extradition request, despite this immunity.

12. Thus, the requested Party has an obligation to consider whether there is lapse of time under the law of the requesting Party before deciding on extradition. However, in order to allow the requested Party to fulfil this obligation, the requesting Party should provide the requested Party with a motivated statement specifying the reasons for which there is no lapse of time and including the relevant provisions of its law. In the rare cases that the requested Party has reasons to believe that immunity by reason of lapse of time might have been acquired, it should request information on this question from the requesting Party itself.

13. The requesting Party should provide this information together with the extradition request, without an explicit request to that effect from the requested Party being necessary (see also Article 12, paragraph 2, sub-paragraphs b and c of the Convention, as amended by the present protocol).

14. As regards the law of the requested Party, paragraph 2 of the modified Article 10 provides that lapse of time shall not serve as a ground for refusal in principle. This is in line with developments in international law , as well as European Union law , which have taken place since 1957.

15. Paragraph 3 qualifies the principle established under paragraph 2, by allowing the requested Party to invoke lapse of time under its own law as an optional ground for refusal in two hypotheses:

- the requested Party has jurisdiction on the relevant offences under its own criminal law;

- its domestic legislation explicitly prohibits extradition in case of lapse of time under its own law.

However, the possibility of doing so is conditional on a reservation to that effect having been made at the time of signature or when depositing the instrument of ratification, acceptance, approval or accession.

16. This reservation may concern either one of the two sub-paragraphs of paragraph 2, or both. The latter case would allow a Party to make a partial withdrawal of its reservation as regards the more far-reaching ground for refusal of sub-paragraph b, while maintaining the more limited ground for refusal of sub-paragraph a.

17. Paragraph 4, is intended to apply only in respect of Parties having made a reservation under paragraph 3. The principle reflected in this provision follows from the Resolution (75) 12 of the Committee of Ministers on the practical application of the European Convention on Extradition.

18. As reflected in the wording "in accordance with its law", it is the law of the requested Party which determines if, and to what extent, acts and events in the requesting Party interrupt or suspend time-limitation in the requested Party.

Article 2 – The request and supporting documents

19. Article 12, paragraph 1 of the Convention provides that requests for extradition shall be communicated through the diplomatic channel. Chapter V of the Second Additional Protocol to the Convention simplified this

system by providing for extradition requests to be sent by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party. However, for a number of countries the competent authority for sending and receiving extradition requests is not the Ministry of Justice, but another authority such as the Office of the Prosecutor General. The present wording is designed to accommodate this practice.

20. Any Party wishing to designate a competent authority other than the Ministry of Justice shall notify the Secretary General of the Council of Europe accordingly. The drafters agreed that any such authority shall be competent at the national level to send and receive extradition requests. In the absence of such notification, the competent authority with respect to that state is understood to be the Ministry of Justice.

21. The drafters took note of the practice of some Parties to the Convention to designate more than one competent authority. In such cases, the declaration of the Party concerned should make it clear how competences of the different authorities are apportioned in extradition cases.

22. It is important to note that Article 2, paragraph 2 of this Additional Protocol provides that Article 5 of the Second Additional Protocol shall not apply as between Parties to the Fourth Additional Protocol .

23. Channels and means of communication are now dealt with in Article 6 of this Fourth Additional Protocol so as to create a common system in this respect.

24. It is important to note that although Article 5 of the Second Additional Protocol will not apply, it will still be possible to conclude agreements between Parties in accordance with Article 28, paragraph 2 of the Convention, as foreseen in Article 7, paragraph 2, of the Fourth Additional Protocol.

25. As regards paragraph 2 of Article 12 of the Convention as amended by this Fourth Additional Protocol, contrary to the Convention which requires an original or authenticated copy of the documents mentioned under sub-paragraph a, this Additional Protocol only refers to "a copy". This is in line with the possibility introduced under Article 6 of the Fourth Additional Protocol to use modern means of communication. However, sub-paragraph a should also be read in conjunction with the reservation provided for under Article 6, paragraph 3 of this Additional Protocol. In cases where the requested Party has made such a reservation, the requesting Party would still have to send the originals or authenticated copies of these documents.

26. In addition, the Fourth Additional Protocol completes the original wording of paragraph 2 of Article 12 of the Convention in two respects. Firstly, Under sub-paragraph b, an explicit reference to provisions relating to lapse of time is included, with the understanding that the appraisal of lapse of time according to the law of the requesting Party, pursuant to Article 10, paragraph 1 of the Convention as amended by the Fourth Additional Protocol, should be based on the assessment made by that Party of lapse of time according to its own law. Secondly, under sub-paragraph c, the relevant information to be sent is completed with a reference to the location of the person, due to practical considerations.

Article 3 – Rule of speciality

27. The rule of speciality corresponds to the principle that an extradited person may not be arrested, prosecuted, tried, sentenced or detained for an offence other than that which furnished the grounds for his or her extradition. In this context, it is important to underline the responsibility of the requesting Party to ensure that the initial request for extradition is as complete as possible and based on all available information, in order to avoid future requests for the extension of extradition to other offences committed prior to the initial request.

28. This article rewords Article 14 of the Convention, by introducing the following amendments:

1. in paragraph 1, the words "proceeded against" are replaced by the words "arrested, prosecuted, tried" and a new sub-paragraph is inserted under paragraph 2, in order to clarify the scope of the rule of speciality;

2. In paragraph 1, the sentence containing the words "nor shall he or she be for any other reason restricted in his or her personal freedom", has been restructured in order to align the English and French versions;

3. in paragraph 1, sub-paragraph a, a time limit of 90 days is introduced for the formerly requested Party to communicate its decision on the extension of the extradition to other offences;

4. in paragraph 1, sub-paragraph b, the period of 45 days is reduced to 30 days;

5. a new paragraph 3 is introduced, creating the possibility for the requested Party to authorise the requesting Party to restrict the personal freedom of the extradited person pending its decision on extension of the extradition.

29. As regards point 1, the reason for the change is the fact that there had been many different and sometimes conflicting interpretations of the words "proceeded against" in different legal systems. The replies to a questionnaire sent by the PC-OC indicated notably that the authorities of some Parties to the Convention had interpreted the words "proceeded against" to cover any measure taken by the authorities of the requesting Party, even before a case is brought to trial. This had made it impossible for those Parties to investigate and collect evidence in relation to offences committed prior to a person's extradition and which are discovered after her/his surrender. This has created significant difficulties in some Parties or led to the rejection of evidence collected on such offences by courts.

30. The drafters of the Fourth Additional Protocol were of the view that such an interpretation did not reflect the intention of the drafters of the Convention, as the requesting Party should not be barred from doing whatever is necessary in order to organise the file for a request to be addressed to the Party which surrendered the person in accordance with paragraph 1, sub-paragraph a, seeking the consent of that Party to the extension of the extradition to offences not covered in the initial extradition request. Such a request for consent should notably be accompanied by the documents mentioned in Article 12, which implies that the requesting Party may initiate or continue proceedings up to the point where it obtains the necessary documents for requesting the other Party's consent, such as a new warrant of arrest.

31. The new wording of paragraph 1, in combination with the new paragraph 2, sub paragraph a, makes it clear that the rule of speciality does not bar the requesting Party from conducting pre-trial investigations and doing what is necessary in order to obtain the documents mentioned under paragraph 1, sub-paragraph a, while still ruling out the possibility for the requesting Party to bring the case to trial or restrict the personal freedom of the extradited person, solely based on these newly discovered offences. In this context, pre-trial investigations are to be understood to comprise intrusive measures such as wiretapping or house searches with regard to the extradited person, as well as confrontation and interrogation of persons other than the extradited person in connection with these additional offences. The extradited person may be interrogated or confronted insofar as this investigative measure does not imply coercion, i.e. the restriction of the personal freedom of the extradited person. Article 14 of the Convention, as revised by this Fourth Additional Protocol, should also not prevent the requesting Party from summoning the extradited person for the purpose of gathering evidence in order to institute proceedings against other persons who are not covered by the rule of speciality.

32. The concept of "restriction of personal freedom" is to be interpreted so as to include not only deprivation of liberty in accordance with Article 5 of the European Convention of Human Rights, but also restrictions on "liberty of movement", in accordance with Article 2 of Protocol No. 4 thereto. Thus, a ban to leave the territory of the requesting Party would for example qualify as a restriction of personal freedom.

Paragraph 1, sub-paragraph a

33. As regards point 3, the PC-OC considered that the introduction of a time limit for the requested Party would be an added value in the context of the modernisation of the Convention. This is linked to the observation of the PC-OC that extension of extradition to new offences is sometimes characterised by co operation which is less prompt compared to the initial request and can cause significant delays, which causes problems in the criminal procedures of requesting Parties and may also have negative consequences for the defendant. The PC-OC therefore agreed that the introduction of such a time limit would have a clear added value.

34. Even though some Parties to the Convention follow the same procedure for giving consent to the extension of the extradition decision as they do for the initial extradition request, the PC-OC observed that certain elements, such as the presence of the person already in the requesting Party or the technical nature of many extension requests, may allow for a speedy decision on extension. The drafters thus agreed that 90 days would be sufficient for the requested Party to take its decision on consenting to the extension of extradition.

35. However, in certain cases, it might not be possible for the requested Party to treat the request for consent within 90 days, in which case this period can be extended. This nonetheless constitutes progress vis-à-vis the mother Convention, as in such cases the requested Party would have an obligation to inform the

requesting Party of the reasons for the delay and the time needed for reaching a decision. This would reduce uncertainty for the requesting Party and limit the disruption to its criminal procedure.

Paragraph 1, sub-paragraph b

36. The amendment to paragraph 1, sub-paragraph b concerns the delay following the final discharge of the extradited person after which the rule of speciality ceases to apply. The Convention provides that the rule of speciality shall not apply if the person has not left, having had the opportunity to do so, the territory of the requested Party within 45 days of the person's discharge or if the person has returned to that territory after leaving it. The drafters considered that the 45-day period had no objective justification 50 years after the adoption of the Convention, given that it has become much easier to travel and leave the territory of Parties. They therefore agreed to restrict this delay to 30 days.

37. This provision also contains two conditions which have to be fulfilled for the rule of speciality to cease to apply. The person must have been "finally discharged" and had the "opportunity to leave the territory".

38. The term finally discharged should be interpreted in line with the meaning attributed to that term under the Additional Protocol to the Convention on the Transfer of Sentenced Persons. Paragraph 32 of the explanatory report to that Convention provides that:

> "The expression "final discharge" (in French: "élargissement définitif") means that the person's freedom to leave the country is no longer subject to any restriction deriving directly or indirectly from the sentence. Consequently, where, for instance, the person is conditionally released, that person is finally discharged if the conditions linked to release do not prevent him or her from leaving the country; conversely, that person is not finally discharged where the conditions linked to release do prevent him or her from leaving the country."

39. With regard to the words "opportunity to leave the territory", and as clarified in the explanatory report to Article 14 of the original Convention, the person must not only be free to leave the territory, but also not be hindered from doing so for other reasons (for example, for serious health reasons).

Paragraph 3

40. The rule of speciality prohibits any restriction of the personal freedom of the extradited person for offences committed prior to his or her extradition, other than those which furnished the grounds for this extradition. However, there might be rare cases where this principle could potentially create an impediment to the pursuit of the ends of justice, even where there is no oversight on the side of the requesting Party.

41. A typical example would be a situation where the requesting Party discovers new elements after the extradition implicating the extradited person in connection with an offence not included in the original extradition request, on the basis of new evidence or new links to existing evidence. Another example would be the situation where a third country submits a request for re-extradition after the surrender of a person. If the release of that person from custody for the initial offence is imminent, the requesting Party may have to release the person before it can obtain the consent from the requested Party to extend the extradition to the new offence.

42. Paragraph 3 contains an optional provision which will only apply between Parties to this Protocol having made a declaration to that effect. The provision introduces a special procedure within the rule of speciality for such exceptional cases, which allows the requesting Party to continue restricting the personal freedom of the extradited person until the requested Party takes its decision on consent pursuant to paragraph 1, sub-paragraph a.

43. According to this procedure, in order to restrict the personal freedom of the extradited person on the basis of new offences, the requesting Party must notify its intention to do so to the requested Party. This notification must take place either at the same time as the request for consent pursuant to paragraph 1, sub-paragraph a, or at a later stage. No restriction on the basis of new offences can take place outside the knowledge of the requested Party and before its acquiescence, which is tacitly given by the competent authority acknowledging the receipt of the notification of the requesting Party of its intention to proceed to such a restriction. The competent authority is the authority referred to in Article 12, paragraph 1 of the Convention as modified by Article 2, paragraph 1, of the present Protocol. Parties making a declaration in favour of this optional provision are encouraged to indicate, by the notification foreseen under Article 12, paragraph 1, of the Convention as modified, who will be the competent authority delivering the acknowledgment of receipt. In the absence of such notification, the competent authority will be the Ministry of

Justice (reference is made to paragraphs 19 to 21 of this Explanatory Report). An automatically generated receipt of acknowledgment can not be regarded as an explicit acknowledgment of the receipt by the competent authority.

44. This acquiescence allows the requesting Party to take measures on the basis of its warrant of arrest for new offences, according to its own law and subject to its procedural guarantees and to the control of its domestic courts. However, the requested Party may at any time express its opposition to such a restriction of personal freedom, either simultaneously with its acknowledgement of receipt or at a later stage. The requesting Party must comply with this opposition, in the former case by abstaining from taking the measure restricting the personal freedom of the extradited person, and in the latter case by putting an immediate end to the measure in question.

45. The drafters considered that the opposition of the requested Party pursuant to this paragraph may be only limited to certain types of restriction. For example, the requested Party could inform the requesting Party that the latter may not detain the person in question, but use alternative measures restricting her or his personal freedom, such as a house arrest or a ban to leave the country.

46. The drafters of the Additional Protocol considered that the changes to the rule of speciality have no impact on surrender procedures between EU member states on the basis of the EU Framework Decision on the European Arrest Warrant.

Article 4 – Re-extradition to a third state

47. The changes to Article 15 of the Convention are in line with the amendments to Article 14 of the Convention, and concern the introduction of a time limit not exceeding 90 days for the requested Party to decide whether or not it consents to a re-extradition of the person surrendered to another Party or to a third state.

Article 5 – Transit

48. This article, which was inspired by Article 11 of the Third Additional Protocol to the Convention, simplifies considerably the transit procedure foreseen in Article 21 of the Convention. The drafters of the Additional Protocol noted that, for an effective and speedy transit procedure, the request for transit should be sent as soon as possible. The drafters also took note of Recommendation No. R (80) 7 of the Committee of Ministers of the Council of Europe concerning the practical application of the European Convention on Extradition.

49. In accordance with paragraph 2, the request for transit does not have to be accompanied by the documents referred to in the new Article 12, paragraph 2 of the Convention. Accordingly, the information listed in this paragraph may be considered sufficient for the purposes of granting transit. Nevertheless, in exceptional cases where this information is not sufficient for the state of transit to reach a decision on granting transit, Article 13 of the Convention would apply and allow that Party to request supplementary information from the Party requesting transit. While information concerning lapse of time is not included in this list, the drafters agreed that such information should also be provided in cases where lapse of time is likely to be of concern, for example due to the time of commission of the offence.

50. Pursuant to Article 6 of this Fourth Additional Protocol, communications for transit purposes may be made through electronic or any other means affording evidence in writing (such as fax or electronic mail), and the decision of the Party requested to grant transit may be made known by the same method. Parties can also make use of these means of communication for practical arrangements. Thus, the Party requesting transit is encouraged to communicate, to the extent possible, information such as the intended time and place of transit, the route, flight details, or the identity of the escorting officers, as soon as this information becomes available.

51. The drafters of this Fourth Additional Protocol considered that the new Article 21 of the Convention could also cover cases where only the Party requesting transit and the Party requested to grant transit are Parties to the Convention, and extradition has been granted on a legal basis other than the Convention.

52. It is no longer an obligation under this Fourth Additional Protocol to notify a Party whose air space will be used during transit when it is not intended to land. However, paragraph 3 foresees an emergency procedure in the event of an unscheduled landing. As soon as the requesting Party is informed of such an event, it shall notify to the Party on whose territory the unscheduled landing occurs that one of the documents mentioned in Article 12, paragraph 2, sub-paragraph a exists. While this Additional Protocol does

not specify the form this notification should take, the relevant documentation carried by the escorting officers, or information contained in the INTERPOL or Schengen Information Systems could, for example, be considered sufficient in this respect.

53. Similarly to the original wording of Article 21, paragraph 4 of the Convention, the Party on whose territory the unscheduled landing occurs shall consider this notification as a request for provisional arrest, pending the submission of an ordinary request for transit in accordance with paragraphs 1 and 2.

Article 6 – Channels and means of communication

54. This Article, which is based on Article 8 of the Third Additional Protocol to the Convention, provides a legal basis for speedy communication, including electronic means of communication, while ensuring the authenticity of the documents and information transmitted. It would affect means of communication in relation to several provisions of the Convention, including Articles 12, 13, 14, 15, 16, 17, 18, 19 and 21. The Parties may also request to obtain the original document or an authenticated copy, in particular by mail.

55. The drafters of this Fourth Additional Protocol agreed that the current trend was towards a more intensive use of electronic means of communication, and that the text of the Convention should be open to future developments in this respect, including the possibility of sending all extradition documents using electronic means. However, some delegations considered that for the most essential documents, namely those referred to in Article 12, paragraph 2 and Article 14, paragraph 1, sub-paragraph a of the Convention as amended, it would be premature in the current circumstances to abolish the requirement for transmission by mail, until more reliable electronic means, such as communication with secure electronic signatures, are more widespread.

56. In order to accommodate these concerns, paragraph 3 of this Article allows states to declare that they reserve the right to require the original or authenticated copy of the request and supporting documents for these specific Articles in all cases. This reservation can be withdrawn as soon as circumstances permit.

Article 7 – Relationship with the Convention and other international instruments

57. This article clarifies the relationship between the Protocol on the one hand, and the Convention and other international agreements on the other hand.

58. Paragraph 1 ensures uniform interpretation of this Additional Protocol and the Convention by providing that the words and expressions used in the Protocol shall be interpreted within the meaning of the Convention. The Convention should be understood as the European Convention on Extradition of 1957 (ETS No. 24), as amended between Parties concerned by the Additional Protocol (ETS No. 86), the Second Additional Protocol (ETS No. 98) and/or the Third Additional Protocol (CETS No. 209) thereto.

59. Paragraph 1 further clarifies the relationship between the provisions of the Convention and those of this Fourth Additional Protocol, i.e. as between the Parties to this Protocol, the provisions of the Convention shall apply to the extent that they are compatible with the provisions of this Additional Protocol, in accordance with general principles and norms of international law.

60. Paragraph 2 is designed to ensure the smooth co-existence of this Fourth Additional Protocol with any bilateral or multilateral agreements concluded in pursuance of Article 28, paragraph 2 of the Convention. It states that the Additional Protocol does not alter the relation between the Convention and such agreements or the possibility for Parties to regulate their mutual relations with regard to extradition exclusively in accordance with a system based on a uniform law (Article 28, paragraph 3 of the Convention).

61. This implies in particular that declarations made by EU member states in relation with the European Union Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between member states (2002/584/JHA) would automatically apply to this Fourth Additional Protocol and would make it unnecessary for the states concerned to make new declarations to that effect.

Article 8 – Friendly settlement

62. This article recognises the important role of the European Committee on Crime Problems in the interpretation and application of the Convention and the Additional Protocols thereto, and follows the precedents established in other European conventions in the criminal justice field. It also follows Recommendation Rec (99) 20 of the Committee of Ministers, concerning the friendly settlement of any difficulty that may arise out of the application of the Council of Europe conventions in the penal field. The

reporting requirement which it lays down is intended to keep the European Committee on Crime Problems informed about possible difficulties in interpreting and applying the Convention and the Additional Protocols thereto, so that it may contribute to facilitating friendly settlements and proposing amendments to the Convention and the Additional Protocols thereto which might prove necessary.

Articles 9 to 15 – Final clauses

63. Article 11 has been introduced to ensure clarity about the application in time between Parties to this Fourth Additional Protocol. The Protocol will only apply to new requests, received after the entry into force in each of the Parties concerned. The word "requests" covers requests for extradition, additional requests for consent and requests for transit.

64. The remaining Articles are based both on the "Model final clauses for conventions and agreements concluded within the Council of Europe" which were approved by the Committee of Ministers at the 315th meeting of their Deputies in February 1980, and the final clauses of the European Convention on Extradition.

65. Since Article 12 concerning territorial application is mainly aimed at overseas territories, it was agreed that it would be clearly against the philosophy of this Additional Protocol for any Party to exclude parts of its main territory from the application of this instrument, and that there would be no need to lay this down explicitly in this Fourth Additional Protocol.

66. Reservations and declarations made by a state with regard to any provision of the Convention or the Additional Protocols thereto, which is not amended by this Fourth Additional Protocol, shall also be applicable to this Additional Protocol, unless that state declares otherwise in accordance with Article 13, paragraph 1.

67. It is underlined that under the provisions of Article 13, no reservation may be made with regard to the provisions of this Additional Protocol except for the reservations provided for under Article 10, paragraph 3, and Article 21, paragraph 5 of the Convention as amended by this Protocol, and Article 6, paragraph 3 of this Fourth Additional Protocol.

Abridged report of the 60th plenary session (Strasbourg, 14-17 June 2011) of the European Committee on Crime Problems (CDPC)

The European Committee on Crime Problems (CDPC) met in Strasbourg from 14-17 June 2011.

Items submitted to the Committee of Ministers for decision

1. The CDPC invited the Committee of Ministers:

a. to examine and adopt the draft Fourth Additional Protocol to the European Convention on Extradition (see appendix) and take note of its explanatory report (see CM(2011)118 add).

Items submitted to the Committee of Ministers for information

2. The CDPC invited the Committee of Ministers to note that:

a. the CDPC took note of the information provided by Mr Jan Kleijssen, Director of Standard-Setting, on the on-going reform process of the Council of Europe and in particular the recent decisions regarding the restructuring of intergovernmental committees;

b. the CDPC examined the report on the "Sentencing, management and treatment of "dangerous" offenders" which was finalised by the PC-CP at its 66th meeting (December 2010). Concerning the follow-up to be given to the report, the CDPC instructed its Bureau to clarify the scope for possible future standard-setting activities and to present a possible "Roadmap" in this regard to be discussed at its next plenary meeting in December;

c. the CDPC examined the draft recommendation concerning foreign prisoners and its draft commentary. The CDPC instructed the PC-CP to take into account the general comments made by the CDPC during the plenary;

The CDPC also instructed the Secretariat to refer to these general observations to CDPC delegations when asking them for their additional comments by written procedure by 30 September 2011 and to prepare a compendium of the individual comments received. The CDPC should examine these comments when finalising the draft recommendation at its next plenary meeting in November. The CDPC instructed the PC CP to transmit the revised version of the draft recommendation as well as its commentary to the CDPC which will examine and approve both texts at its next plenary meeting in December in view of their adoption by the Committee of Ministers next year;

d. the CDPC examined the draft European Code on Prison Staff Ethics and instructed the PC-CP to continue the examination of this text at its next plenary meeting in November taking into account the comments made by the CDPC at its plenary meeting. The CDPC instructed the PC-CP to transmit the revised text to the CDPC which will examine and approve it at its next plenary meeting in December in view of its adoption by the Committee of Ministers next year;

e. the CDPC considered the discussion paper prepared by the Secretariat containing specific proposals concerning working methods and the adequate time frame for the follow-up to Resolution No. 2 adopted at the 30th Council of Europe Conference of Ministers of Justice, "Modernising Justice and the Third Millennium: transparent and efficient justice; prisons in today's Europe" (Istanbul, Turkey, 24-26 November 2010), approved it with amendments and instructed the Secretariat to initiate the necessary measures to implement the follow-up to Resolution No. 2 as foreseen in the document approved by the CDPC;

f. the CDPC had an exchange of view with the Chair of the PC-OC, Mr Per Hedvall, concerning the ongoing and future activities of the PC-OC. The CDPC welcomed the important work accomplished in modernising the Convention on extradition and the ongoing efforts to increase the Committee's visibility and interaction with practitioners. The PC-OC was instructed to pay particular attention in its future work to the practical operation of the relevant Conventions and to look at possible measures to ensure the authentication of communications forwarded by electronic means as referred to in Article 6 of the draft Fourth Additional Protocol to the Convention on Extradition;

g. the CDPC took note of the information provided by the Secretariat of the Council of Europe, and notably of the Enlarged Partial Agreement on Sport (EPAS) and by the Chair of the GRECO, concerning the current and future work related to the issue of match-fixing, particularly on the related draft recommendation on the Promotion of the Integrity of Sport against the Manipulation of Results. The CDPC was also informed by the EPAS Secretariat of the foreseen schedule leading to the possible adoption of the recommendation by the Committee of Ministers on 28 September 2011. Subsequently, the CDPC provided initial comments on the part of the "Guidelines" concerning criminal law aspects (Chapter C and Chapter D), appended to the draft Recommendation, and decided to ask the Secretariat of EPAS to transmit to the CDPC a revised version of the text by 21 June. For this purpose, the CDPC requested that its comments made during its plenary, concerning the structure and content of criminal law provisions, be duly taken into account. As for the follow-up procedure, the CDPC decided that its position would depend on the quality of revised text and its compatibility with existing relevant criminal law provisions of other Council of Europe instruments;

h. the CDPC took note of the information provided by the Secretariat on the reform process in the Council of Europe and decided to instruct the Secretariat to revise its proposed draft terms of reference for 2012-2013 as well as those for its subordinate structures (PC-OC and PC-CP). The CDPC asked to see the proposed terms of reference before they would be sent to the Committee of Ministers;

i. in the context of the general discussions related to the "Future activities and priorities of the CDPC", the CDPC examined the discussion paper prepared by the Secretariat upon instruction by the Bureau containing proposals on future priorities and main activities of the CDPC. The CDPC supported the proposal of addressing organised crime with a global and multi-disciplinary approach. The CDPC stressed the importance of providing added value in this respect and considered therefore that it should stay realistic taking account of its own capacities as well as of existing activities on this issue by other international organisations to avoid duplications. It instructed the Bureau to address further the possibility of establishing a new sub-committee to work on this issue by identifying clearly its composition and functions possibly aiming at preparing an international event;

j. the CDPC examined the replies by the CDPC delegations to the questionnaire sent by the Secretariat on 13 May on "Reinforcing the effectiveness of Council of Europe treaty law" and considered that the large majority of CDPC delegations agreed with the proposed classification of Conventions. The CDPC decided to draw the attention of the Secretary General to the readiness of the CDPC to provide its advice/contribution when the update of relevant criminal law conventions is envisaged. Concerning criminal law conventions classified as "inactive"/"obsolete", the CDPC considers that the legal validity of Council of Europe criminal law conventions which have entered into force should be respected. Furthermore, the CDPC considers that the existence of international legal instruments of other international organisations, in particular the European Union, should not be a ground for considering Council of Europe criminal law conventions as being invalid. The CDPC instructed the Secretariat to send to CDPC delegations an updated compendium containing additional replies as well as a document summarising them;

k. the CDPC examined the preliminary draft opinion on criteria and procedure for the accession of non-member states and instructed the Secretariat to amend it in accordance with the comments made during the plenary and to transmit the revised version to CDPC delegations by written procedure for their comments. The CDPC instructed its Bureau to examine and approve the new version of the opinion taking account of the written comments received with a view to transmitting it to the Committee of Ministers;

l. the CDPC further took note of the preliminary draft opinion of the T-CY on criteria and procedure for the accession of non-member states to the Budapest Convention and instructed the Secretariat to provide the T-CY with the comments and suggestions of the Committee.

3. The CDPC took note of:

a. the information provided by the Secretariat concerning 16th Council of Europe Conference of Directors of Prison Administration (CDAP) (13-14 October 2011, Strasbourg);

b. the presentation by Professor Marcelo Aebi, scientific expert, of the 2009 Council of Europe Annual Penal Statistics SPACE I and SPACE II and the additional information provided by the Secretariat in this regard. The CDPC delegations underlined once again that SPACE statistics are a very useful tool for the national authorities in their work in the field of prisons and community sanctions and measures. The CDPC encouraged all delegations to send in time the replies to the questionnaires and to involve competent professionals in the preparation of the answers in order to improve the quality of such data and their comparability;

c. the presentation by Professor Nicola Padfield of her report on the "Sentencing, management and treatment of "dangerous" offenders" which was finalised by the PC-CP at its 66th meeting (December 2010);

d. the information provided by the Secretariat concerning a possible new binding criminal law instrument on trafficking in human organs, tissues and cells to be elaborated under the auspices of the CDPC and the possible work schedule involved;

e. the information provided by the Secretariat on the current and future work of the T-CY, notably with regard to possible new standard-setting work on jurisdiction and related issues in relation to cross-border investigative measures on the Internet;

f. the information provided by the Secretariat with regard to the preparation of a report by the Secretary General to the Committee of Ministers on how to reinforce the effectiveness of Council of Europe treaty law;

g. the information provided by the Secretariat with regard to the new Convention of the Council of Europe on preventing and combating violence against women and domestic violence;

h. the information provided by the Secretariat concerning the opening of signature of the new Council of Europe Convention on counterfeiting of medical products and similar crimes involving threats to public health (Medicrime Convention) which is expected to take place on 28 October in Moscow;

i. the information provided by the Secretariat on the follow-up to the ratification process of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Convention), and in particular the setting-up of the Committee of the Parties and its first meeting on 20 21 September 2011.

4. The CDPC decided to hold its next meeting during the week of 5 December 2011.

The CDPC invited the Committee of Ministers to take note of this report as a whole.

Bureau of the Assembly

Declaration for International Women's Day 2012: democracy and gender equality one and the same struggle

The Bureau of the Parliamentary Assembly of the Council of Europe, meeting in Paris on 8 March 2012, International Women's Day, recalls that every year for over a century, this day has drawn our attention to the fact that women and men do not have the same opportunities in life. This year it should also remind us that equality and democracy are inextricably linked and that one cannot exist without the other.

The Bureau underlines that women's limited participation in politics undermines the legitimacy and representativeness of institutions, prevents equality being treated as a political priority and reduces the opportunities for holding governments to account for the lack of decisive progress in combating gender discrimination and promoting women's rights. There can be no genuine democracy without the fair participation and representation of women in public debate, political parties and institutions.

In Europe, in spite of the advances made and a well-developed legal framework, there are still legal and practical obstacles which hinder participation by women in public life and politics; the democratic awakening in spring 2011 in the Arab world will quickly turn into a winter unless there is a clear and decisive commitment to recognise gender equality in law and practice and unless women are able fully to participate in the new political processes taking shape in the countries concerned.

The Bureau recognises that if inequality is to be eradicated and the foundations laid for stable, sustainable and participatory democracy, it is political will that is needed above all. It therefore calls on all political leaders, both male and female, to commit themselves resolutely to promoting democracy and equality, which is one and the same struggle.

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Bureau de l'Assemblée

Déclaration pour la journée internationale de la femme 2012 : un même combat pour la démocratie et l'égalité entre les femmes et les hommes

Le Bureau de l'Assemblée parlementaire du Conseil de L'Europe, réuni à Paris le 8 mars 2012, en cette journée internationale de la femme rappelle que, chaque année depuis plus d'un siècle, cette journée nous interpelle sur le fait que les femmes et les hommes n'ont pas les mêmes chances dans la vie. Cette année, elle devrait aussi nous rappeler que l'égalité et la démocratie sont inextricablement liées et qu'on ne pourra pas avoir l'une sans l'autre.

Le Bureau souligne que la faible représentation des femmes en politique nuit à la pleine légitimité et représentativité des institutions, empêche que la question de l'égalité soit placée parmi les priorités politiques et diminue la redevabilité des gouvernements face au manque de progrès décisifs dans la lutte contre la discrimination fondée sur le sexe et dans la promotion des droits de femmes. Sans la participation et représentation équitables des femmes dans le débat public, dans les partis politiques et dans les institutions, il n'y aura pas de démocratie véritable.

En Europe, malgré les avancées accomplies et un cadre juridique développé, des barrières juridiques et pratiques continuent d'entraver la participation des femmes dans la vie publique et politique ; le réveil démocratique du printemps 2011 dans le monde arabe deviendra rapidement un hiver faute d'un engagement clair et net à reconnaître dans le droit et la pratique l'égalité entre les femmes et les hommes et sans la pleine participation des femmes aux nouveaux processus politiques en cours dans ces pays.

Le Bureau reconnaît que, pour éradiquer l'inégalité et établir les bases d'une démocratie solide, durable et participative, il faut tout d'abord la volonté politique. Il appelle donc tous les responsables, hommes et femmes politiques, à s'engager résolumment dans ce même combat pour la démocratie et l'égalité.