



CONSEJO GENERAL DEL PODER JUDICIAL
SERVICIO DE FORMACIÓN CONTINUA

MODULE II: THE INSTRUMENTS OF JUDICIAL COOPERATION IN CRIMINAL MATTERS IN THE CONTEXT OF THE COUNCIL OF EUROPE.-

PRESENTATION.-

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1. CONTENT.-

In my capacity as tutor of Module II of the “Online Course on Judicial Cooperation in Criminal Matters in Europe” organised by the Ongoing Training Service of the Spanish Judicial School, I would like to welcome all the students participating in the course to this new module, dedicated to the analysis of the instruments of judicial cooperation in criminal matters in the context of the Council of Europe.

After the first module of the online course, which gave us an overall view of judicial cooperation in criminal matters and analysed the different scopes of application of this cooperation, highlighting the landmarks on the road along which this field has evolved and putting the instruments and institution through which it is articulated into context, the module we are now embarking on centres on the study of different instruments (conventions) produced by the Council of Europe in order to promote international judicial cooperation in criminal matters, and is comprised of three subject units:

- Topic 4: “The Convention on International Mutual Assistance in Criminal Matters of 1959”, of which I am the author.
- Topic 5: “The European Convention on Extradition”, by Dr Emilio Gatti, Judge, Court of Genoa.
- Topic 6: “Other Council of Europe Conventions”, prepared by Mr Andrés Palomo del Arco, President (Chief Judge) of the Segovia Provincial Court.

As has already been indicated in the different subject units in the foregoing module of this online course, the seeds of international judicial cooperation in criminal matters in Europe were sown by the Council of Europe, which in the second half of the 20th century laid the foundations on which cooperation policies on the continent were developed, to the extent that a good number of the instruments prepared in the sphere of that institution continue to constitute the pillars on which judicial cooperation in criminal matters between states in Europe stands today.

Moreover, the creation of the Council of Europe in 1949 represented a watershed in relation to mutual assistance in criminal matters on a European level, insofar as it represented the start of a new phase in which the legal instruments used in international cooperation began to transcend mere bilateral or multilateral conventions giving way to a more or less intense process of European integration which includes other aspects in addition to mere judicial assistance or cooperation. Indeed, the Council of Europe was created in the period following the Second World War by means of the Statute of London of 5 May 1949 as a compromise solution between the position of the founding European states that wanted an intense process of integration involving a Parliamentary Assembly with wide-ranging powers (France and Belgium) and that of others (basically the United Kingdom) who were content with a European organisation entailing only coordination between the states, acting through a Committee of Ministers¹.

The aims of the Council of Europe are to promote a common legal and democratic area in Europe in order to defend human rights, pluralist democracy and the rule of law, developing democratic stability in Europe by promoting the necessary political, legislative and constitutional reforms, encouraging the awareness and the development

¹ The Council of Europe is based in Strasbourg (France) and consists of four bodies: the Committee of Ministers (the organisation's decision-making body, comprising the Ministers of Foreign Affairs of the Member States or their ambassadors, who represent them permanently in Strasbourg), the Parliamentary Assembly (the body promoting European cooperation, representing the national parliaments with 636 members -318 representatives and 318 substitutes-), the Congress of Local and Regional Authorities (which speaks on behalf of the regions and towns of Europe, comprising a chamber of local authorities and a chamber of regions) and the Secretariat General (composed of around 1800 public servants from all the Member States and led by the Secretary General, who is chosen by the Parliamentary Assembly). At present, the Council of Europe has 47 Member States (Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and United Kingdom) and five observer states (Canada, United States of America, Japan, Mexico and the Holy See), and its ordinary budget for 2009 amounts to €205,002,000.

of the European cultural identity, as well as its diversity, fostering social cohesion and social rights and seeking common solutions to the problems faced by European society, such as discrimination against minorities, xenophobia, intolerance, terrorism, organised crime and corruption, trafficking in human beings and violence against children. Since the start of its activity, the Council of Europe has become a pan-European forum for cooperation in different areas and to that end it has promoted the conclusion of several conventions and agreements, the most noteworthy being, just one year after its creation, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, supplemented by the European Court of Human Rights, which acts as an instrument guaranteeing the effectiveness of the fundamental rights recognised in the convention.

In the sphere of legal cooperation in criminal matters in the context of the Council of Europe, two basic instruments have been adopted: the European Convention on Extradition of 1957 and the European Convention on Mutual Assistance in Criminal Matters of 1959, which are of huge importance and will be dealt with in detail in two of the units of this module, together with their respective additional protocols. The first of these instruments brought with it important advances in relation to extradition, as it replaced the nineteenth-century list system or *numerus clausus* of offences eligible for extradition with a system of *numerus apertus* based on the principle of legality and linked to dual criminality; it replaced the traditional diplomatic channels with direct communication between Ministries of Justice of the states in question, with the consequent speeding-up of the processing of extradition requests, and led to the imposition of a general obligation to surrender the persons sought by the requesting state, subject to the conditions and rules envisaged in the convention itself and regulated by certain specific safeguard clauses. The European Convention on Mutual Assistance in Criminal Matters of 1959, on the other hand, independently regulated matters related to judicial assistance (letters rogatory, the service of procedural documents and judicial decisions, summoning witnesses, experts and persons in custody, as well as notifying information in relation to criminal records) contemplating for the first time the possibility of direct communication between judicial authorities and establishing, moreover, legal obligations of assistance between the contracting states, that may only refuse cooperation in specific cases envisaged in the convention.

It should be highlighted, however, that the Council of Europe has promoted the adoption of many more conventions, agreements and protocols on diverse matters, given the multidisciplinary nature of the organisation, to the extent that at present, the total number of instruments adopted reaches 205. Of the complete list of instruments of

the Council of Europe, there are 31 dealing with criminal matters (including the two already mentioned on extradition and general assistance in criminal matters and their additional protocols), some of which are limited to a specific criminal field (for example, the European Convention for the Punishment of Road Traffic Offences of 1964, the European Convention for the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes of 1974, the European Convention for the Suppression of Terrorism of 1977, Criminal Law Convention on Corruption of 1999 or the Convention on Action against Trafficking in Human Beings of 2005) and include some more or less detailed rules on cooperation or assistance in criminal matters between the contracting states.

Other instruments of the Council of Europe regulate specific aspects of cooperation or assistance in criminal matters both in a general manner and indirectly, so they are complementary in relation to the two basic conventions already mentioned and their additional protocols. The most important aspects of these complementary conventions will be studied in the third unit of this module, which will analyse the following instruments: the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 1964; the European Convention on Information on Foreign Law of 1968 and its Additional Protocol of 1978; the European Convention on the International Validity of Criminal Judgments of 1970; the European Convention on the Transfer of Proceedings in Criminal Matters of 1972; the Convention on the Transfer of Sentenced Persons of 1983 and its Additional Protocol of 1997; the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990; the Convention on Cybercrime of 2001; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005.

2. METHODOLOGY.-

As already indicated in the presentation of the previous module, one of the aims of this online course is to train the participants without the need, in theory, for physical contact with lecturers and tutors and by using teaching instruments that rely on electronic media, apart from the classroom sessions planned for the final stage of the course, following what is known as a blended methodology.

All the materials prepared by the lecturers (including the units, the self-assessment test and the case study for each module) are at the disposal of the participants via the specific IT tool which provides direct interaction with the tutor and permanent contact

with all participants. This tool facilitates individual communication via email and, moreover, is aimed at promoting collective and active participation by the students in the forum, where questions will be raised in order to stimulate debate involving an exchange of ideas and joint reflection of all participants. I invite you as of this moment to prepare proposed questions to be debated on the forum in relation to the topics dealt with in the different units of the module, because I believe that there is no reason for the active participation of the students to be restricted to a debate on the questions posed by the course lecturers.

Finally, I would just like to thank you for your attention and effort in participating in this innovative educational experience and remind you that I am at your disposal to deal with any observation or comment you may wish to make. I trust that upon concluding this online course we will all have acquired new knowledge that is useful for our professional and personal development.

Madrid, June 2010