

reservations to the Convention have been significantly reduced and such refusal will be subject to a specific follow-up procedure, which will also apply to the followup of any obligation under the Convention as amended.

#### (iv) Co-operation activities

In the framework of its co-operation activities in 2003, the Council of Europe provided comments on the law n° 54-XV "on Extremist Activity" of the Republic of Moldova, following a request from the Moldovan authorities. Following a request from the Armenian authorities, the Council of Europe initiated a legal expertise on the Armenian draft law on "anti-terrorism campaign" at the beginning of 2004.

Furthermore, in the framework of its co-operation with the UNODC, the Council of Europe participated in the following co-operation activities related to the implementation of UNSCR 1373:

- Croatia, national seminar (Valbandon, 22-23 September 2003)
- Hungary, national seminar (Budapest, 12 October 2003)
- Lithuania, regional seminar for the Baltic States, Russia and Ukraine (Vilnius, 6-7 November 2003)
- Italy, regional seminar on the development of a model law on extradition (Siracusa, 2-6 December 2003).
- Turkey, regional seminar for Regional Workshop for Central Asia and the Caucasus on International Co-operation against Terrorism and Transnational Organized . (Antalya, 23-25 February 2003)

Finally, in the framework of its cooperation with the OSCE, the Council of Europe took part in a regional seminar on the implementation of UNSCR 1373 in South East Europe (London, 10-11 December 2003).

### (2) Safeguarding fundamental values

"Guidelines on human rights and the fight against terrorism" were adopted by the Committee of Ministers in July 2002 to ensure that the fundamental values of democracy, human rights and the rule of law did not fall victim to the fight against terrorism.

The Guidelines remind States of their duty to protect their populations against acts committed in defiance of human rights. This may lead them to take special measures, even possibly derogatory measures, provided that these are reasonable and proportionate and strike a balance between the obligation to provide protection against terrorist acts and the obligation to safeguard human rights. They specify the limitations, drawn from international texts and the case-law of the European Court of Human Rights, which member States and, more generally, all states concerned about respect for human rights and the rule of law will impose on themselves in their efforts to combat terrorism: prohibition of arbitrary treatment, respect for the right to life, an absolute ban on torture and inhuman or degrading treatment, prohibition of retroactive legislation, the right to a fair trial and the refusal to extradite individuals to countries where they may be condemned to death.

### (3) Addressing the causes

This third line of action aims at weakening some of the factors on which terrorism feeds through intercultural and inter-religious dialogue.

In October 2003, the Conference of the European Ministers responsible for Cultural Affairs adopted a Declaration on Intercultural Dialogue and Conflict Prevention.

Two integrated projects further contribute to the activities of the Organisation in this area, namely "Democratic institutions in action" which aims at improving participation of marginalised or disadvantaged population groups in political and social life and "Responses to violence in everyday life" which examines the role of culture in conflict prevention.



## COUNCIL OF EUROPE COUNTER-TERRORIST ACTIVITIES

### COUNCIL OF EUROPE (www.coe.int)

Within two months of the terrorist attacks in the United States, in the context of firm political commitments from the Committee of Ministers, the Parliamentary Assembly and the Conference of European Ministers of Justice, the Council of Europe began to implement a plan of action adopted by the Committee of Ministers in November 2001. The Council of Europe's action is threefold: (1) strengthening legal action against terrorism; (2) safeguarding fundamental values and (3) addressing the causes.

#### (1) Strengthening legal action against terrorism (www.coe.int/gmt)

The GMT, a governmental committee of experts bringing together experts from the 45 member States of the Organisation and a number of observer States and organisations, was set up by the Committee of Ministers in November 2001 with the tasks of (i) identifying priorities for future action by the Council of Europe and (ii) reviewing the relevant Council of Europe international instruments, in particular the European Convention on the Suppression of Terrorism of 1977. The GMT held six meetings from December 2001 to December 2002.

On 15 February 2003, following the expiry of the GMT's mandate, the Committee of Ministers decided to set up a Committee of Experts on Terrorism (CODEXTER) responsible for coordinating and following up the counter-terrorist activities of the Council of Europe in the legal field. The CODEXTER held its first meeting in October 2003, where it considered the implementation of the Council of Europe's priority activities mentioned hereafter, and will hold its second meeting 29 March 1 April 2004.

#### (i) Areas of activity

The priority activities in the fight against terrorism as identified by the GMT and agreed by the Committee of Ministers are:

- research on the concepts of "apologie du terrorisme" and "incitement to terrorism";
- special investigation techniques (PC-TI) ;
- protection of witnesses and *pentiti*/collaborators of justice (PC-PW);
- international co-operation on law enforcement;
- action to cut terrorists off from funding sources;
- questions of identity documents which arise in connection with terrorism.

In *Resolution No. 1 on combating terrorism* adopted at the 25<sup>th</sup> Conference of European Ministers of Justice (Sofia, 9-10 October 2003) The Ministers of Justice identified further areas for immediate work by the Council of Europe, including:

- the compensation of victims of violent crimes, including terrorism;
- the effectiveness of national judicial systems in their responses to terrorism;
- the creation of a European register of national and international standards, starting with the fight against terrorism.

Furthermore, the Ministers invited the Committee of Ministers to launch work with a view to examining, in the light of the opinion of the CODEXTER, the added value of a comprehensive European Convention on terrorism, open to observer States, or some elements of such a convention, which could be elaborated within the Council of Europe and would contribute significantly to the UN efforts in this field.

## (ii) Recent developments in the implementation of these activities

### • Research on the concepts of "apologie du terrorisme" and "incitement to terrorism"

The CODEXTER discussed a preliminary draft of a study, undertaken by the Dutch T.M.C. Asser Institute, on the concepts of "apologie du terrorisme" and "incitement to terrorism", based on the replies from member States to a questionnaire. It was proposed that at its second meeting, from 29 March to 1 April 2004, a working group be set up to deal with the analysis of the study on the concepts of "apologie du terrorisme" and "incitement to terrorism" (CODEXTER-APOLOGIE).

### • Special Investigation Techniques (PC-TI) and Protection of Witnesses and 'Pentiti' (PC-PW)

The CODEXTER furthermore examined and endorsed the final reports and conclusions reached by the Committee of Experts on Protection of Witnesses and 'Pentiti' in relation to Acts of Terrorism (PC-PW) and the Committee of Experts on Special Investigation Techniques in relation to Acts of Terrorism. Each Committee received terms of reference instructing it to undertake a study and to make proposals as to the feasibility of preparing an appropriate legal instrument. The PC-PW and the PC-TI started their work in April 2003 and finalised it in September 2003 at their third meeting.

The European Committee on Crime Problems will consider the final report and conclusions of the PC-PW and the PC-TI at their 53rd plenary Session (15-19 March 2003) as well as the adoption of revised terms of reference for both these Committees with a view to the development of appropriate legal instruments concerning the protection of witnesses and 'pentiti' and the use of special investigation techniques.

### • International co-operation on law enforcement

International co-operation on law enforcement relating to the fight against terrorism is presently discussed within the Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC). At their next meeting, 1-3 March 2004, the PC-OC will address, from the perspective of international co-operation, the question of possible instruments to be elaborated as a result of the pursuance of the priority activities against terrorism.

### • Action to cut terrorists off from funding sources

The terms of reference of the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) were amended in 2002 (and extended till the end of 2007) to include the financing of terrorism. As a result, its current terms of reference recognise the FATF's 8 Special Recommendations on terrorist financing as international standards and authorise the evaluation of the performance of MONEYVAL States in complying with them (25 Council of Europe States which are not members of the FATF<sup>1</sup>). A round of mutual evaluations of all MONEYVAL States on both money laundering and terrorist financing issues is planned to commence in the summer of 2004.

### • Questions of identity documents which arise in connection with terrorism.

The Group of Specialists on Identity and Terrorism (CJ-S-IT) was set up to build further on the work of the Group of Specialists on Identity and Terrorism Issues (CJ-S-ID) which concluded its activities in 2003. The newly established CJ-S-IT is called upon to prepare provisions to be included in an international instrument to contribute to and strengthen the Council of Europe and its member States' action against terrorism, especially focusing on the matters relating to identity indicated by the CJ-S-ID.

### • The compensation of victims of violent crimes, including terrorism

At the 25th Conference of European Ministers of Justice (Sofia, 9-10 October 2003), the Ministers adopted Resolution N° 1 on Combating Terrorism, in which they invited the Committee of Ministers "to review the **European Convention on the Compensation of Victims of Violent Crimes** of 24 November 1983 (CETS No. 116) or, where necessary, adopt new rules concerning the improvement of the protection, support and compensation of victims of terrorist acts and their families".

At its first meeting, the CODEXTER considered this invitation and concluded that before deciding on the revision of CETS No. 116 it would be advisable to study the reasons for the poor level of ratification of this Convention (to date, 15 States have ratified and a further 9 have signed). They furthermore agreed to proceed to an exchange of information and good practice on compensation and insurance schemes introduced by States, particularly in relation to victims of terrorist acts. This will take place at the second meeting of the CODEXTER.

### • The creation of a European register of national and international standards, starting with the fight against terrorism

In considering this proposal by the European Ministers of Justice, the CODEXTER underlined the need to avoid duplication with existing collections of legal data developed by other organisations such as the UN and OSCE and to ensure that this collection would present an added value to existing compilations of national legislation. The idea of producing short country reports addressing the most relevant questions related to member States' standards and capacity to respond to terrorist acts was welcomed in this respect. It was proposed that a working group be set up at its second meeting to deal with the development of country profiles on the counter-terrorism capacity (CODEXTER-PROFILER).

### • The effectiveness of national judicial systems in their responses to terrorism

The European Commission for the efficiency of justice (CEPEJ) is preparing an assessment report on the effectiveness of national judicial systems in their responses to terrorism. This Commission, established on 18 September 2002, is composed of experts from all Council of Europe member States and aims at improving the efficiency and functioning of justice in the member States. Its tasks are: to analyse the results of the judicial systems; to identify the difficulties they meet; to define concrete ways to improve, on the one hand, the evaluation of their results and, on the other hand, the functioning of these systems; to provide assistance to member States, at their request; and to propose to the competent bodies of the Council of Europe the fields where it would be desirable to elaborate a new legal instrument.

### • Possible comprehensive convention on terrorism to be drafted in the Council of Europe

As per the decision of the Committee of Ministers' Deputies and the Resolution adopted by the 25th Conference of the European Ministers of Justice, the CODEXTER is considering the feasibility and the added value of a comprehensive European convention on terrorism which could be elaborated within the Council of Europe as a contribution to the work of the UN in this field. An independent study was prepared and concluded in favour of such a convention. Moreover, in January 2004, the Parliamentary Assembly of the Council of Europe adopted Recommendation (2004) 1644 in which it calls on the Committee of Ministers to "begin work without delay on the elaboration of a comprehensive convention on terrorism of the Council of Europe". The CODEXTER will consider this item at its next meeting.

## (iii) The European Convention on the suppression of terrorism

The Amending Protocol to the 1977 European Convention on the Suppression of Terrorism was formally adopted by the Committee of Ministers on 13 February 2003 and opened to signature on 15 May 2003. To date, the European Convention on the Suppression of Terrorism (CETS No. 090) has been ratified by 42 States and signed by 3 further States while its Amending Protocol (CETS 190) has been ratified by 2 States and signed by 38 States.

The Amending Protocol will enter into force once all the Parties to the European Convention have become Parties to the Protocol.

The 1977 Convention sets out to "depoliticise" certain crimes and offences for the purpose of extradition.

The Protocol introduces a number of significant changes: the list of offences which may never be regarded as political or politically motivated has been substantially extended and now includes all the offences covered by all the UN anti-terrorist conventions; a simplified amendment procedure has also been introduced allowing new offences to be added to the list; the Convention has been opened to observer states, and the Committee of Ministers may decide to open it to non-member states; the possibility of refusing to extradite offenders to countries where they risk being exposed to the death penalty, torture or life imprisonment without parole; possibilities to refuse extradition on the basis of

<sup>1</sup> Albania, Andorra, Armenia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Poland, Romania, Russian Federation, San Marino, Slovak Republic, Slovenia, "the former Yugoslav Republic of Macedonia" and Ukraine.