

Finland

1. Please give examples of criminal cases, without personal data, where public prosecutors in your country have experienced significant difficulties when working with public prosecutors or other judicial bodies in other European countries. In your opinion, what are the reasons of these difficulties (e.g. types of cases which raise special difficulties linked to domestic laws or foreign legislation or procedures, lack of knowledge of the steps to be taken, lack of direct contacts, insufficient knowledge of languages or legal instruments, or problems linked to translation, undue delay, gaps or inappropriate provisions of the relevant European Conventions and bilateral agreements or other texts, etc...).

Background

In Finland, the criminal investigation authority leads the criminal investigation, not the prosecutor. The prosecutor leads the criminal investigation only in cases where police have committed offences. The prosecutor and the criminal investigation authority are by law obliged to co-operate in the criminal investigation. With respect to Article 24 of the Council of Europe Convention on Mutual Assistance in Criminal Matters, Finland has declared that, for the purpose of the Convention, i.a. the criminal investigation authorities will be deemed judicial authorities. In practice, many of the requests for legal assistance that Finland receives (e.g. house searches, confiscations, hearings of parties) are executed by authorities with the power of arrest, i.e., in addition to the prosecutors, high-ranking criminal investigation authorities. The criminal investigation authorities are also authorized to make requests for legal assistance to foreign states. Therefore, also their experiences of legal assistance co-operation have been mapped out in the answers to the questionnaire.

In general, the legal assistance cooperation has worked well. There are very few cases where a foreign state, or Finland, has flatly refused to provide legal assistance.

The most common problems have been related to an unreasonable delay in answering the request on the part of the foreign state. Requests for expediency have not always been answered and not always led to a more expedient execution. Such situations have occurred with different states.

There have also been situations of the following kinds:

- 1) in spite of an inquiry regarding the person in charge of the execution of a request no information has been given in order to facilitate direct contact
- 2) the request has originally been directed to the wrong authority, and it has not been immediately transferred to the correct competent authority
- 3) sometimes the request has caused no reaction; the request has disappeared into a "black hole"
- 4) in some cases the states (e.g. Estonia and Russia) have required that the request be sent through a certain official channel before they can start considering the matter
- 5) in certain countries strict bank secrecy rules have made it difficult to obtain information on bank accounts
- 6) problems related to competence have occurred in some cases when Finnish criminal investigation authorities (police and customs authorities) have not been deemed competent to request legal assistance
- 7) lack of coordination in requests requiring expediency and significant resources, for example in cases involving controlled delivery
- 8) finding sufficient resources for cases involving tracing of the proceeds from crime has proved difficult
- 9) in cases of a tax fraud type the criminal law provisions vary: a tax fraud in Finland does not necessarily constitute a crime in another state

- 10) a request for the hearing a person has been submitted but the request does not indicate the procedural capacity (suspect, witness or victim) of the person to be heard
- 11) in cases involving Russia it has been found that the Russian legislation appears to prevent the execution of a request for legal assistance if the person in question is to be heard in the capacity of suspect. In practice, this means that the investigation in Finland cannot proceed. An extradition procedure is not possible since Russia does not extradite its own citizens, and Finland, on the other hand, cannot transfer prosecutorial measures to Russia, since the suspect has not been heard at all.

We further refer to the annual report of Eurojust 2005 and its appendix II which presents problems in connection with cross-border crime.

Possible reasons for the problems:

- the requests go via the Central Authorities and the possibility for direct contacts between the competent authorities is sometimes lacking (for reasons related to the legislation of a country or for practical reasons, such as deficient language skills), which slows down the procedure
- delays due to translation especially if a state does not accept requests in any other language than its own (if the language in question is not very common, the translation can be time-consuming and the possibility for errors in the translation will increase)
- the request is not forwarded to the competent authority in the executing state without delay, nor is information on the official dealing with the matter provided
- received requests are not registered; they may disappear into a "black hole"
- inquiries are not always answered
- national procedural provisions are more restricting than required by the valid international treaties
- the states should create a system with special experts dealing with matters of legal assistance and extradition of offenders; the language skills of these officials should be enhanced
- the resources of the state are used up by its own domestic crime investigations and the requests of a foreign state cannot be adequately attended to
- the quality of the requests for legal assistance should be improved (a clear description of the matter in question, what is requested and why).

2. Please give examples of criminal cases, without personal data, where public prosecutors in your country were satisfied with the co-operation with public prosecutors or other judicial bodies in other European countries. In your opinion, what are the reasons for this successful co-operation (e.g. types of cases which can be dealt with without difficulty, national or foreign good practices, practical measures contained in the provisions of the relevant European Conventions and bilateral agreements or other texts, etc...).

On the whole the cross-border co-operation works well.

Reasons for the smooth co-operation:

- direct contact, good language skills
- the central authority system quickly offers information on the official to whom the matter has been delegated and contact information for him or her
- good professional skills (knowledge of international treaties and official channels/co-operation networks) of the officials dealing with matters of legal

- assistance and extradition of offenders and good national organization of the consideration of these matters
- prompt replies to inquiries
- requests for further clarification without delay
- prompt consideration of matters
- knowledge of the judicial system of foreign states and personal acquaintance with the official dealing with the matter in question
- use of Eurojust
- creation and utilization of co-operation networks (e.g. EJN)
- utilization of liaison prosecutors and police contact persons
- high quality in the presentation of requests.

3. Please give details of any suggestions made by public prosecutors and other judicial bodies in your country concerning the steps which could be taken to improve co-operation between prosecutors in Council of Europe member states, including proposals for an improvement of the relevant European treaties.

A key prosecutor system has been created in Finland around different crime types and criminal procedure provisions thereby guaranteeing the special competence required for the different fields of law. The key prosecutors dealing with international legal assistance and extradition of offenders have been trained to become special experts in international treaties and international co-operation instruments and contact channels. They also have good language proficiency. The services of the key prosecutors in international matters are distributed geographically so that every prosecution unit knows the key prosecutor of their own district. The other prosecutors in the country are instructed to ask for consultation help from the prosecutors. This ensures the level of the competence and a coherent praxis. In addition, it means that all prosecutors do not have to be given the same high-level training.

The key prosecutors act as instructors in questions regarding international criminal procedures. They also carry out a coordinated collection of decisions made in these matters by the supreme courts and inform the whole field of them. They participate in international meetings in the field and procure information on international criminal phenomena in general.

The Office of the Prosecutor General, which is the Central Authority of the Prosecution Service, has an international unit leading the activity of the key prosecutors in international matters and also otherwise answering for the international activity and training of the Office of the Prosecutor General. Being a member of the International Association of Prosecutors, the principal prosecution agency maintains good inter-authority contacts with all continents. Connections made within the Association have made it possible quickly to establish contact even with authorities in the most remote countries.

An emergency duty system has been created for the prosecutors enabling urgent matters to be taken care of outside normal office hours.

The prosecutors have direct access to the electronic intranet containing information on legal assistance matters and matters regarding extradition of offenders, model forms, manuals and contact information for authorities as well as useful international links. The Office of the Prosecutor General maintains and develops international intranet pages. The prosecutors have always had access to e-mail. The prosecutors are encouraged to utilise direct inter-authority contacts.

Often needed documents that have been translated into different languages have been gathered for general access. In this way they do not have to be translated again and are quickly accessible.

An expert group composed of representatives of different administrative sectors tasked with coordinating international legal assistance matters has been working for some years in Finland. It meets once a month under the direction of the Ministry of Justice. In addition to the prosecutors, the members consist of representatives of the International Affairs Unit (Central Authority for legal assistance matters), the Law Drafting Unit and the Criminal Policy Department of the Ministry of Justice, representatives of the courts, representatives of the criminal investigation authorities (police and customs) and representatives of the Ministry of the Interior. The group considers different matters in relation to legal assistance, maps problems and the need for training, proposes solutions and coordinates participation in international inquiries and functions. The group drafts recommendations that each administrative sector develops into instructions. This is an excellent concept for the distribution of information and standardization of procedures in the whole country. When all those who are involved in the international inter-authority co-operation gather around the same table, they get to know each other's work and, through their co-operation obtain advantages of synchronization and reduce overlaps. The group does not consider concrete cases of legal assistance.

The prosecutors have further established a multi-administration expert group to consider questions regarding extradition of offenders and the need for training.

In the police organization all requests for legal assistance go via the National Bureau of Investigation. The NBI has prepared a quality guarantee system comprising an electronic manual with instructions on the legal assistance proceedings, national and international provisions, official channels and useful relevant links. An internal control system ensures that the instructions are observed.

In Finland the national activity of the EJM is organized with contact points meeting regularly and discussing the development of the network.

Finland also has good experiences of the work of the Finnish liaison prosecutors stationed in St. Petersburg, Russia and Tallinn, Estonia. The activity of Eurojust and the EJM has proved positive. The prosecutors have been instructed to utilise Eurojust in full. Also the activity of the liaison police officers stationed in different states has been very useful.

Comments related to European treaties

In the field of extradition, there has been a question on the interpretation of the concept "detention order" within the meaning of Article 23 of the 1995 Extradition Convention. In Finland there was recently a case concerning surrender of our own citizen for the purpose of enforcement of a measure, where the person concerned, on the basis of his/her mental health had not been sentenced to imprisonment but to mental care. In that particular case the Finnish Supreme Court took the view that such measures fall within the scope of a relevant extradition instrument. Even though in that case the question was about interpretation of an EU instrument, namely the Framework Decision on the European Arrest Warrant, the arguments behind the decision of the Supreme Court were taken, inter alia, from the wording of Article 25 of the 1957 Council of Europe Convention. It would be important for practitioners to know whether such measures can be regarded as "detention orders", as referred to in Article 25 of the said Convention.

Securing the claims for compensation of the injured party in a cross-border criminal matter is problematic. There are international instruments for confiscating the proceeds from crimes. The position of the injured party is weak and should be improved in international criminal matters. In Finland the damage suffered by the injured party can be dealt with in connection with the criminal matter. Now it is uncertain whether the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (adopted on 3 May 2005) is applicable to the securing of an injured party's claims for compensation.

In certain legal assistance situations it has happened that the requested state does not on the basis of the European Convention on Mutual Assistance in Criminal Matters (1959) execute requests concerning the hearing of a suspected person.

4. Any other comments

The Council of Europe has in 1998 prepared the publication "Standard text providing information about the Convention on the Transfer of Sentenced Persons" The practitioners in the field wish that this publication be updated and easily accessible on the CoE website.