

## Poland

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 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.).*

**Please find below some identified problem areas in the field of legal co-operation with some countries of the Council of Europe:**

### **Undue delay in execution of the MLA requests:**

In case of the MLA requests sent to some European countries, it takes years before such requests are properly and fully executed. And this is applicable even when some requests are flagged as “urgent” but applies also to the requests of an uncomplicated nature (taking witness statement, obtaining copies of the materials already in the possession of the executing authorities).

From our side we try to monitor the execution of our MLA requests by sending official chasers to the executing authorities. In some cases these remain unanswered. After a lengthy trace we conduct on our own, we sometimes find our requests not even touched upon for years. A typical excuse in this regard is that the requested body hasn't received a request although in our files we have the fax or other confirmation that the requests were sent and delivered.

### **Unnecessary requests for additional information:**

There are cases where the requests for additional information are sent by the executing authorities several times in a given case before our MLA requests are properly and fully executed. And it indicates that the requested party has not thought through the request in its entirety from the outset. For instance:

- we were asked to confirm whether we still require assistance or want to withdraw the request even though we never indicated such was our intention;
- we were asked to provide the data already to be found in the body of the initial request for MLA (e.g. offence committed);

### **Problems with obtaining documents and data:**

This problem occurs even when the papers or information are already in the possession of the executing authorities (e.g. certificates from the registers, materials gathered during investigations - copies of records, witness statements, etc.).

More pressing problem concerns obtaining documents from private and legal entities and also data on bank accounts especially, where the entity, being in the possession of the papers, has declined to submit them voluntarily. In such cases the organs executing the requests have simply stopped their activity there and then, and as a result the requests have remained unexecuted.

Also in some cases, before executing our requests, executing authorities have demanded that we make prior inquiry via INTERPOL. And this has been irrespective of the fact that ‘protocol’ in the field of mutual assistance does not require any previous ‘operational’ inquiry and some requested information are of a ‘sensitive’ nature and as such should only be obtained through formal – judicial channels (data on bank accounts, data from the criminal files on the ongoing investigations, hospital documentation etc.).

**Problems with the manner and form the requests are executed:**

In some cases we requested obtaining witness statements. The reply was that the person in question simply declined to comment on the matter and executing authorities didn't take any further action and simply closed the case.

In another instance we requested some company documents. The organ executing the request approached the representative of the company, warned him about the activity to be carried out and advised him of the possibility of consulting a lawyer. He decided to use this possibility and promised to inform the executing body about the outcome in due course. As a result the documents were not seized and this person was not even questioned as he never returned nor replied to the executing body at all. That body on their side never pursued any further action on its own.

In yet another case, instead of taking a witness statement in the written form (which was explicitly requested by us), we received a statement form the executing body in which we found only the description of the conversation with the witness.

In another case we received a reply that the requested company documents would not be forwarded to our country as the company in question simply declined to surrender them. No further action was taken by executing authorities to get hold of the papers (e.g. by means of a production order or a search/seizure).

Further, in some cases materials that arrive as a result of 'execution' of the request are sometimes in the form which should not generally be acceptable by judicial authorities of any European country (not to mention the fact that the courts may not accept them for evidentiary purpose). A typical example occurred where we requested evidence and the only evidence offered was an e-mail sent from one Police station to another. In another instance we required some official information from the register of companies and what we received was some prints from the publicly available website which bore little relevance to our request, nor was accompanied by any official certification.

**We are of the opinion that reasons for the aforementioned problems may be as follows:**

- possible lack in competency (also lack of the foreign language) or dedication of the executing bodies,
  - possible lack of proper communication between requested and requesting authorities,
  - possible shortage of staff,
  - differences in legal systems between partners (e.g. civil v. common law),
  - lack of understanding of our respective legal systems and internal organization of the system of processing the requests,
  - independence of the bodies (courts, prosecution service, police, customs etc.) responsible for the execution of the incoming requests, bad communication channels between them,
  - shortages in national legislation transposing international instruments,
  - treatment of foreign MLA requests in a way which indicates their inferiority in comparison with national cases.
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 Convention and bilateral agreements or other texts, etc.)*

**Please find below some examples of cases where Polish public prosecutors were satisfied with the speed and scope of execution of their MLA requests:**

In case of some countries the co-operation is seamless and speedy due to the system similarities and close regional bonds where the language plays an important role. In these

cases we could identify many success stories and on many levels of mutual collaboration. An additional element that adds up to that positive picture is that we have a decentralized and not very formalistic co-operation with these countries.

Another positive example is the case of using the liaison officers of most of the Embassies of foreign countries seconded to our country. In case of problems with the execution of our requests abroad, we often seek the assistance of these persons. As their knowledge of the system and law in their home country is much broader than ours, they may 'make things happen' as it comes to the final execution of our requests.

Even in case of some countries where our mutual co-operation is not that seamless, we may nevertheless achieve very good results depending on the level of engagement on the part of the requested country. In one of the cases we required a speedy action to be taken without delay by the requested authority in performing its coordinating function. In this case the successful prosecution was wholly dependent from the execution of our request, namely - providing the expert's opinion by one of the telecommunication centers. The trace was going cold every day. Knowing that, the executing authorities organized the execution of our request within just 2 days and the opinion obtained enabled us to prosecute the suspect successfully. All the time we remained in a direct contact.

Also in yet another case our request for obtaining medical documentation was executed within 3 weeks only and we were able to close the case within a reasonable time.

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.*

- establishing the network of MLA practitioners responsible for direct contacts (some form of the European Judicial Network of the European Union);
- drawing up the list of contact points of that network with their data available on the Council of Europe website;
- providing training for the contact points of the network;
- exchange of materials in a concise and simple form explaining the system of execution of the MLA requests in each country, limits in their executions, conditions to be fulfilled to make the request fully and seamlessly executed, and powers of the responsible bodies;
- general, coordinated training sessions for prosecutors (and also some other relevant bodies) in the area of the MLA based on specific cases and examples;
- elaborating the manual for practitioners in the area of MLA in criminal matters.