

## Scotland

*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...).*

### **Outgoing Extradition request 2004**

The accused was charged with 2 counts of rape and fled the country using a false passport. He was traced to a European country following intelligence information of 2 telephone calls from the accused to his associates. On the basis of this information an EAW for his arrest marked urgent was sent through Interpol. However the police in this country were unable to trace the accused as one of the phone numbers was either ex-directory or a company extension and without an International Letter of Request they would not be able to make any further enquiries. We were unable to provide this ILOR as we were not requesting assistance in relation to the investigation or prosecution of a crime but in relation to an arrest. Article 1 of The 1959 Convention on Mutual Assistance in Criminal Matters states that the Convention does not apply to arrests. Advice was sought from the country's national member at Eurojust who, in turn, referred the matter to their local prosecutor's office. Initial advice from both the Eurojust national member and the local prosecutor's office to direct the UK police to obtain more information on the whereabouts of the fugitive through the police embassy liaison officers proved fruitless. Even when a formal letter was sent to the Prosecutor's office of the European country asking for assistance to arrange enquiries into the telephone number they were reluctant to assist. The accused remains untraced to date.

### **Money Laundering and Drug Trafficking Cases generally**

We have a number of money laundering and drug trafficking cases that are part of multinational investigations. In these cases we generally have enough domestic evidence to secure a conviction at a UK level, however, with effective mutual assistance it becomes possible to secure even bigger International convictions that have higher penalties.

However, often we see problems of delay and we do not receive the evidence requested in time for court. This delay appears to be for a number of reasons including: the language barrier, a lack of appreciation of urgency and a poor understanding of national investigation and prosecution systems. For example we have attempted to obtain Spanish evidence a number of times and this evidence has often been received too late or not at all. A lack of understanding on our part as to how the Spanish authorities investigate and obtain evidence contributes to this problem. At present, Crown Office issue LORs directly to the Ministry of Justice in Madrid. Where we know the evidence is in a particular jurisdiction, it would be helpful to know whether we can transmit LORs directly to regional/district offices. It would be helpful to be able to access a list of contacts naming relevant contact persons in different prosecuting authorities. Such a list could also include email addresses and would be beneficial for sending supplementary enquiries or operational enquiries so as to circumvent the slow and often tedious process of sending such questions via the Central Authority.

### **Poor Translations**

Problems also occur when we receive badly translated Letters of Request, in these cases it is often difficult to understand the offences that are being investigated and what is required by the country. When such LORs are received in respect of complicated matters for example fraud, they can be extremely confusing.

*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...).*

### **Outgoing MLA 2006**

This case involved a large-scale investigation targeting a criminal enterprise concerned in the acquisition and importation of large-scale consignments of all classes of illegal controlled drugs from Mainland Europe into the United Kingdom. One of the principal subjects of the UK led investigation had been the subject of criminal proceedings in another European country previously. A coordination meeting facilitated by Eurojust was arranged between prosecutors. At this meeting the European country agreed to provide their prosecution file to the Scottish authorities in response to two International Letters of Request sent previously. The Prosecutors file was sent quickly by the country and proved to be very useful to the Scottish case. A significant conviction was secured against the accused. This case exemplifies multilateral assistance and the significance of Eurojust in arranging links and contacts between Prosecutors in cross border crime.

### **Outgoing MLA 2006**

As part of a large money laundering investigation, intelligence was received that the suspect, whilst using an alias, was the beneficial owner of a company based Country A that maintained several bank accounts. The subject had been the subject of two previous International Letters of Request to Country A previously and the authorities in Country A had granted Scottish officers permission to assist with these investigations. It was in the course of these investigations that the accounts were discovered. One account contained a six-figure amount. The suspect was subject to restraint proceedings in Scotland. Police investigations in Country A discovered that an application had been made to transfer the large sum of money from the bank account in Country A. The bank stalled this transfer for three days alerting the authorities.

Thereafter, the Scottish Authorities varied the restraint order to specifically mention the bank accounts in Country A and submitted an International Letter of Request to the Ministry of Justice in Country A requesting that they enforce the restraint order. Within 2 days the Ministry of Justice in Country A in conjunction with the local Police and The Unit for Combating Money Laundering had successfully, albeit temporarily, restrained the assets. Although we are still awaiting confirmation that a formal order has been granted, this case illustrates successful co-operation. The initial cooperation between the Scottish and local police uncovered previously unknown and materially relevant bank account information. Thereafter good communication and an established contact in the Ministry of Justice in Country A allowed this case to progress with the necessary urgency.

### **Incoming MLA 2006**

In January 2006 we received a request for Mutual Legal Assistance from the authorities of Country 2 requesting that we interview and obtain evidence from witness X (a civilian) and witness Y, a retired undercover police officer, in connection with an ongoing appeal in the Country 2.

Owing to the complicated nature of the case it was requested that the investigating Magistrate in from Country 2 traveled with her clerk, a prosecutor, and two defence counsel from to Scotland to assist in acquiring the evidence from these individuals. The appeal was in connection with the conviction and sentence of 2 individuals in respect of drug trafficking offences. After many lengthy discussions between the Magistrate from Country 2 and the Scottish International Unit it was decided that the procedure to best meet the requirements was for the witnesses to give evidence on oath in Scotland. The delegation wished to achieve this in one day. Accordingly it was arranged for the delegation to attend at Edinburgh Sheriff Court both for their convenience and also to enable discussion between the Scottish International Prosecutor and the Sheriff charged with overseeing the proceedings. The logistics of the procedure to be applied, who was to ask the questions, the provision of interpreters and short hand writers and other technical difficulties required to be addressed as procedure the procedure in Country 2 did not accord with domestic procedure for taking evidence on oath.

The availability of the witnesses, the Scottish Court, the European country delegation and the local prosecution authorities was compared and 23<sup>rd</sup> March found to be the only suitable day for the interview on oath to proceed. In order that the evidence of Witness X and Witness Y could be obtained in this way, the Lord Advocate signed a nomination authorising the Court to cite the witnesses. The witnesses were duly cited and arrangements made for the payment of their expenses by the Procurator Fiscal.

It was agreed between the parties that the witnesses were to be put on oath by our Sheriff and thereafter they were to be interviewed by the Magistrate, prosecutor and Defence counsel and thereafter an interpreter would relay the questions into English. The witnesses were to answer in English and their replies would be translated where they were to be recorded by the Clerk as directed by the Magistrate. This document was then read back to the witnesses, via the translator, who vouched for the fact that it was a true record of their evidence. Overall this was a very successful example of mutual legal assistance whereby, for all intents and purposes, a Country 2 court was convened in Scotland and was assisted by the Sheriff and the prosecuting authority.

*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.*

- As noted previously, it would be beneficial to have an easily accessible list providing the names of the relevant contact persons within the different prosecuting authorities. This would be helpful especially in cases where we know the evidence is in a particular jurisdiction, so that we could transmit the LORs directly to regional/district offices.
- It would also be helpful to be provided with a synopsis of the prosecution and investigation model within each member country. Such a visual model would help with understanding the procedure specific to each country when dealing with International Requests.

*4. Any other comments.*