

## SLOVAKIA

### 1) Negative experiences

#### *Legal assistance*

Within criminal matters conducted in the territory of one CE Member State when a national of another CE Member State living in that state is prosecuted/accused (extradition is out of question), and given that the accused person does not cooperate, fails to attend the acts, the following problems have been identified within the scope of mutual cooperation in criminal matters, primarily, with regard to the execution of the questioning of the accused person, and several problems have arisen:

- instruction,
- form and way of questioning,
- possibility for the defense counsel to actively participate in the questioning.

In majority of cases, only the countries with similar legal regulations (or those with flexible legal regulations) carry out the questioning of the accused person.

According to our experience, the countries which shall not execute the questioning of the accused are Russia, United Kingdom, Ireland.

With regard to the Ireland, we even have identified the problem concerning service of resolution to accuse, since the legal department has decided that the request shall not be forwarded to the competent authority, because the resolution to be served had not been issued by **judicial authority**.

The Ireland's construction of the Article 7, par. 1, ETS 30 is that the decisions taken/issued by a judicial authority only can be served.

The analysis of relevant linguistic versions has shown that a slight difference may be identified which might result in such problem, but in my view, any procedural document may be served if competent/judicial authority had requested for.

The following and more active problem concerns the possibilities to ensure the accused person's rights – defence, active participation of the defense counsels. Majority of countries including SK allows/permits the defense counsel's attendance of the act given that the counsel asks questions by means of the competent authority of the executing state. There are countries (e.g. Russia), which do not permit defense counsel's attendance at all based on the fact that they have to observe internal/domestic legal regulations on exclusivity of solicitors/barristers listed in the domestic registry.

Length of proceedings represents one of the major problems especially with relation to the United Kingdom, Ireland, France, Ukraine, Russia and Croatia.

#### *Transfer of criminal proceedings*

The problems related with transfer of proceedings (jurisdiction) represent further problem that has been identified.

In such case, primarily the statutory bar/limitation of actions issues is concerned with relation to the cases with no possibility to surrender a person. If the period of criminal proceedings exceeds the statutory bar period then a person in question shall not be punished.

Incorrect application of the ETS 30 instead of the ETS 73 causes doubts about acceptability of evidence, Czech Republic.

Insufficient (or none) instruction to the injured persons who – within proceedings in the other state – have completely different rights and they have to exercise them again. Usually that results in prejudice to their rights in relation to their claim.

#### *Extradition*

Extreme length of proceedings is the major problem.

Application of the speciality principle:

- proceedings are inadequately long to grant consent with criminal prosecution for criminal acts that had not been included in the original arrest warrant (France)
- as for the Article 12, par. 2, different countries use different constructions concerning the documents to be submitted (some states do not issue a new arrest warrant but, as for the request to extend the extradition, they submit the genuine/original one arguing that their domestic regulation does not permit it (United Kingdom, Poland)
- there are also problems concerning the length and complexity of proceedings to take decision about extension of extradition in relation to third countries (re-extradition).

## **2) Positive experiences**

Co-operation on the basis of bilateral international agreements is the best operating/functioning one.

Reasons:

personal contact,  
smaller linguistic obstacles.

Nowadays, the closest co-operation we have is that one with the neighboring countries.

Italy has always been problematic state as far as the length of proceedings is concerned; co-operation has significantly accelerated since the Italians have accepted that requests shall be sent directly to the competent judicial authority.

## **3) Proposed steps to be taken**

### **LEGAL ASSISTANCE**

- to carry out the analysis of the Article 7, par. 1),
- to carry out review of the application of the Article 4, ETS 30,
- to create database of the competent authorities (similarly to the EU Judicial Atlas).

### **EXTRADITION**

- simplified extradition proceeding
- simplified procedure to take decision about granting consent with further criminal prosecutions,
- to introduce for both the state and extradited person the possibility to waive application of speciality principle,
- to introduce the possibility of restricting personal freedom of a person in relation to which extension of extradition is requested for i.e. the person's personal freedom should be restricted immediately after submission of a request by the state of extradition.

### **TRANSFER OF CRIMINAL PROCEEDINGS**

- after taking over the criminal proceeding, the obligation should be introduced to respect the injured person's rights pursuant to the rules of the requesting state. In case of doubts it is supposed that the rights have been asserted.

It can be stated in general, that the most positive co-operation (as for swiftness, quality of the execution of the acts as well as flexibility of supplementation) exists with the neighboring countries with which we have similar legal regulations and minimum linguistic problems.