

North Ireland

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...).

In responding to this questionnaire in addition to prosecutor colleagues we have conferred with the Crown Solicitor for Northern Ireland who has conduct of any extradition proceedings in Northern Ireland and provides advice on matters relating to extradition proceedings in Northern Ireland.

Examples of instances where we have experienced significant difficulties – include cases where we have been dealing with countries where delay has arisen; poor translations have been provided; legislation or rules have been referred to which have not been provided or incomplete or wrong portions have been provided; the circumstances relating to various offences have either been too short or so detailed as to make it extremely difficult to clearly identify the relevant facts and issues. Also when matters of this nature have been brought to the attention of the appropriate authorities some have tended to either do the minimum to correct them or indeed have made things even more complex.

More specific examples are:-

- Difficulties may arise as a result of the differing systems of presenting evidence in court. In a request for mutual legal assistance on behalf of Her Majesty's Revenue and Customs (hereinafter referred to as HMRC) the foreign authorities provided the requested surveillance of the movements of a smuggler's lorry in the foreign jurisdiction together with a written report detailing those movements but the individual officers involved in the surveillance declined to make statements or to attend court in Northern Ireland.
- Replies to requests for mutual legal assistance usually provide only the specific assistance which is requested therein. The Police Service for Northern Ireland (hereinafter referred to as PSNI) have found that foreign jurisdictions may have possession of other relevant and useful information or evidence the existence of which is unknown to PSNI. In one HMRC/PSNI investigation a request for mutual legal assistance issued. During the course of obtaining the requested information PSNI officers discovered (in the course of a conversation with foreign police) that the foreign authorities were themselves investigating the same suspects and had also carried out surveillance. The evidence relating to that surveillance would have been of assistance to police in Northern Ireland. A direct liaison with police in the foreign jurisdiction would have highlighted this before the request for mutual legal assistance issued.
- It is essential that the evidence is received in a form that is admissible in a criminal trial in Northern Ireland. In one case PSNI required formal proof of the judgment given in a criminal trial in another country. The reply took the form of a document copied from the Internet. This was not in an evidential format and therefore added to the delay in proceedings as a supplementary request for mutual legal assistance will have to issue. Direct contact between the investigators and the foreign jurisdiction would have clarified the format in which the evidence was required and avoided this problem arising.

- Telephone records, and particularly mobile telephone records, play an increasingly important part in criminal investigations into cross-border offences such as smuggling, drugs or money laundering. At the commencement of an investigation investigating officers may be unaware of the identity of all persons involved in the offence under investigation so evidence proving the identity of the subscriber to a mobile telephone is often crucial in the early stages of an investigation. In this jurisdiction PSNI have set up a liaison system with the various telephone companies to enable them to obtain speedy access to telephone records. This may not be the case in all countries and obtaining telephone records in some jurisdictions has proven to be particularly slow.
- A request for mutual legal assistance was forwarded to the foreign authorities. It appears to have gone astray after leaving the UK Central Authority and no reply was received for a considerable time. It appears that it may have been misdirected once it arrived in the foreign jurisdiction. Direct contact with local police would have disclosed the fact that it had not arrived at its correct destination.

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...).

We were satisfied with the level of co-operation where the European countries concerned have more literally transcribed the Framework Decision into their law, thereby making the procedure, machinery etc more accessible and more practicably applicable. Also in those places where the United Kingdom has liaison magistrates the way is smoothed as they know the system, can identify the appropriate authorities and can intervene or intercede when and where appropriate.

Specific examples are:-

- Both PSNI and HMRC report that requests for mutual legal assistance are answered expeditiously when they are in a position to have direct telephone or e-mail contact with a police or customs officer in the country to whom the request is addressed. PSNI report that in one murder case the request for mutual legal assistance that issued to the Kingdom of the Netherlands received a very swift response. They were able to liaise directly with an Inspector of the Netherlands police force in order to clarify the evidence required and the format that it should take, she in turn was able to inform them what evidence was in fact available and obtain it for them in the requested format. The request for mutual legal assistance was correctly drafted to obtain the available evidence in the proper format. In the same case the reply to a request for mutual legal assistance to another jurisdiction was slow, police had no contact in that country and were unable to ascertain the cause of the delay. Investigators in Northern Ireland are of the view that having a personal police/customs/prosecutors contact is of great assistance in clarifying whether the required evidence is in fact available and in obtaining that evidence in an admissible form.
- In a request for mutual assistance to France to obtain evidence in the investigation into the abduction of a child from Northern Ireland, the PSNI found the French authorities most helpful in permitting the PSNI officers to be present during the interview of witnesses, in providing instantaneous translation and in permitting PSNI officers to assist in the questioning of the witnesses. The assistance was provided in a timely and efficient fashion.

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.

- It is unfortunate that so many new initiatives are being taken forward on the basis of Framework Decisions which, in many ways, are set at the lowest common denominator for all the participant countries. Thereafter the various countries have to transpose the Framework Decision into their own law. At the transposition stage there is a tendency to include additional provisions for a variety of reasons (many may be constitutional) but the end result is a Framework Decision operated within the domestic legislation of all the participating countries. Convention documents would be preferable where each country can in one document register their reservations/derogations etc but the transposition will consist merely of the legal mechanism whereby the Convention is in toto brought into their domestic law. That way certainty, uniformity and smoothness of procedure would be best served.
- It would be of assistance, if at a very early stage in an investigation the prosecutors or investigating officers could have direct contact with police officers/prosecutors in the country to whom the request will be addressed in order to clarify the availability of assistance that can be provided, the format that assistance should take and to explain any delays in obtaining that assistance. This informal contact between investigating officers/prosecutors and the authorities in the requested country can also serve to disclose information not known to the investigators/prosecutors in the requesting country.

4. Any other Comments : None.