UKRAINE

REPLIES TO THE QUESTIONNAIRE

1. Answers to this question are illustrated by the examples of execution of requests for legal assistance in the concrete criminal cases, though they are generalized in problem issues which occur systematically while considering the legal assistance requests and extradition requests.

Problem issue 1: Identification of punishability of action for which extradition is requested in accordance to the legislation of the requesting state.

While considering requests of competent authorities of Ukraine, the Prosecutor General's Office of the Russian Federation often complies with the request as a whole though refuses extradition for the qualified indications, for example, "repeated crime", "on a large scale", "significant harm" etc. Thus, refusal in extradition is based on a difference of criminal legislation of Ukraine and the Russian Federation including the difference in the norms of material law, namely the qualified indications of crimes in the criminal laws of two countries.

For example, in December 2006 the Prosecutor General's Office of the Russian Federation complied with the request for extradition of L., Ukrainian, who was detained on the territory of Russia to be brought to the criminal responsibility for theft. Though the Prosecutor General's Office considered lawful to comply only with "theft" which is a part of the extradition request, excluding the qualified indication of "repeated action", because the latter is absent in the Russian criminal legislation. Thus, in this case the person was extradited only for the theft with further bringing to the criminal responsibility for this crime. This position of the Russian Federation competent authorities influences the measure of punishment for L. fixed by the court in its verdict.

Problem issue 2: Difference of procedures in continental and Anglo-Saxon systems of law.

Ukraine and the UK are related to different legal systems. Consequently, every country has different legal procedures which results in the duration of execution of requests which are sent by the Ukrainian competent authorities to the UK.

Long terms of execution of requests are characteristic for the mutual legal assistance with the other countries of Western Europe. This fact is explained by significant possibilities for appellation of decisions taken in the course of rendering mutual legal assistance.

Problem issue 3: Long term execution of requests and groundless requirements to render additional information.

Execution of Ukrainian legal assistance requests which are sent to the State of Israel is long-term. More often the execution of these requests are accompanied by the Israel side to give additional information concerning the matters raised by the Ukrainian competent authorities in the request. Though the State of Israel is not a member state in the Council of Europe, it ratified the European Convention on Mutual Assistance in Criminal Matters, 1959, and the European Convention on Extradition, 1957. Requests on mutual legal assistance and extradition are based on the above mentioned conventions.

Problem issue 4: Legal assistance in matters concerning fiscal offences.

In October 2004 the request of the Prosecutor General's Office of Ukraine was refused by the Federal Department of Justice. The request concerned the fiscal offence and it is qualified as "intentional tax evasion" in accordance with the Ukrainian Criminal Code. Switzerland came to the conclusion that on the basis of indicated circumstances there does not exist the body of the crime "tax fraud" under the Swiss legislation. Accordingly the Ukrainian request for legal assistance was refused.

With this Switzerland made a note that its state had not ratified the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters. Resulting from this, the state could not apply Article 1 of this Protocol related to the fiscal offences because the state did not have any obligations in rendering legal assistance concerning fiscal matters.

Problem issue 5: Languages application in relations of mutual legal assistance

While considering Ukrainian requests for legal assistance Turkey returned them together with the annexes which were compiled in English.

For example, in December 2006 the Prosecutor General's Office of Ukraine has received the letter from the Turkish Ministry of Justice enclosed the supplements to the request. Besides it asked for more detailed description of the articles of the Criminal Code of Ukraine, it contained the complaint that the Ukrainian competent authorities didn't send the supplements in Turkish. Though as it is seen from the list of declarations and reservations to the European Convention on Mutual Assistance in Criminal

Matters, 1959, the Turkish Republic didn't make any declarations to the Article 16 of the mentioned convention.

2. In general, the Prosecutor General's Office of Ukraine is actively involved into cooperation in the field of mutual legal assistance with practically all member-states of the Council of Europe on the basis of European conventions.

As a rule, main grounds for successful cooperation are well established contacts on the working level. In most cases it allows to speed up the execution of mutual legal assistance requests, or even to avoid misunderstanding at the beginning while drafting the request.

3. In our opinion, the basis for successful cooperation is further ratification of the Council of Europe legal instruments by the European countries. Ratification of the conventions and protocols to them in the sphere of mutual legal assistance in criminal matters by the most of the CE states will illustrate the readiness of the states to cooperate under obligations taken in this sphere.

Besides, with the aim to improve cooperation between prosecutors from the Council of Europe states it seems useful to start the process of drafting absolutely new conventions on mutual legal assistance and extradition. The provisions of these new conventions shall conform with the requirements of time and substitute the active conventions which need to be updated already.