



**FIGHT AGAINST ORGANISED CRIME AND CORRUPTION,
STRENGTHENING THE PROSECUTORS' NETWORK**

Seminar on international legal cooperation

26th – 28th November 2012

Podgorica, Republic of Montenegro

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The overall objective of the IPA 2010 project: Fight against organised crime and corruption: Strengthening the Prosecutors' Network, is to improve cross-border and international judicial cooperation in the Beneficiaries (Albania, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Montenegro, Serbia as well as Kosovo*) to investigate and prosecute cross-border crime, in particular organized crime and corruption.

Within the framework of the IPA Regional Programme 2010, the European Commission (Directorate-General Enlargement) has provided a grant to a consortium consisting of the German Development Cooperation), and the Netherlands Center for International Legal Cooperation (for the implementation of the project „Fight against organised crime and corruption: Strengthening the Prosecutors' Network" (EuropeAid/130729/ACT/Multi).

The Project covers the countries of the Western Balkans: Albania, Bosnia and Herzegovina, Croatia, Kosovo, Former Yugoslav Republic of Macedonia, Montenegro and Serbia.

The Project started in November 2011 with the overall objective to improve and promote cross-border and international judicial cooperation in the Beneficiaries to investigate and prosecute cross-border crime, in particular organized crime and corruption. Specific objective of the Project is to strengthen the operational capacity and capabilities of the Prosecutors' Offices in the Beneficiaries to prosecute and investigate cross-border organized crime and linked cases of economic and financial crime and corruption.

Within the framework of the project, it is envisaged that trainings will be provided to strengthen the capacities of the Prosecutor Offices with regard to the use of cross border instruments in prosecutor services. It is planned to realize a number of regional

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence. This footnote applies whenever Kosovo is mentioned in the report.

as well as national trainings within the project but also to integrate the topics in the future training program for Prosecutors at the Western Balkans.

To achieve the goal of strengthening the legal cooperation in the Balkan region, a seminar was prepared with the emphasis on exchange of experiences and best practices in international legal cooperation.

The seminar took place from 26th to 28th of November 2012 in Podgorica, Republic of Montenegro.

The seminar was attended by participants from Montenegro (Supreme State Prosecutor Office), from Albania (Serious Crimes Prosecutors Office; General Prosecutor's Office), from Bosnia and Herzegovina (Prosecutor's Office of Bosnia and Herzegovina; Federal Prosecutor's Office of Bosnia and Herzegovina; Zenica-Doboj Cantonal Prosecutor's Office; District Prosecutor's Office in Trebinje), from Croatia (Office for Suppression of Corruption and Organised Crime (USKOK)), from Serbia (Prosecutor's Office for Organized Crime; Higher Prosecutor's Office in Belgrade), from Macedonia (Basic Public Prosecution office on Organised Crime and Corruption) and from Kosovo (Pristina District Prosecutor's Office; Special Prosecution Office).

The seminar was also attended by EU Member State Seconded Prosecutors and National Legal Officers from the beneficiaries.

The seminar was practically oriented with the emphasis on the active participation of the participants in the workshops dealing with concrete cases and best practices. The program of the seminar was adjusted to this purpose and was composed from two parts: the practical part and the educational part.

The educational part was carried out with the help of two presentations.

The first presentation was brought forth by Lisette Vos, a public prosecutor from the Netherlands, who presented to the participants with examples of international cooperation. She especially addressed the issue of the cultural differences, the need to

get to know your counterpart and to respect customs. Mutual respect is the key to good cooperation.

The second presentation was carried out by Thomas Pepper, Senior Advisor to the PCC SEE Secretariat, who presented to the participants the PCC SEE Manual¹ which is a police manual on international police cooperation. He specially emphasized the many possibilities for international cooperation that can be based on the Police Cooperation Convention for Southeast Europe.² All participants have received a copy of the manual.

The main part, on the practice of international cooperation, was carried out with the help of workshops where the participants received a written description of a case, which represented a possible every day work situation dealing with international legal cooperation. The participants had to discuss the possibilities, the potential problems and best practices of international legal cooperation that would derive from such cases. The object of these workshops was to discover and overcome gaps in the legislation through practical work and get the outline of best and worst practices in international cooperation.

WORKSHOPS

The practical part was divided into four workshops; the first three workshops were on simulated cases and the last workshop on the best practices in different countries.

¹ Police Cooperation Convention for Southeast Europe (PCC SEE) is a convention that envisages modern forms of cooperation among the Contracting Parties, such as joint threat analysis, liaison officers, hot pursuit, witness protection, cross-border surveillance, controlled delivery, undercover investigations to investigate crimes and to prevent criminal offences, transmission and comparison of DNA profiles and other identification material, technical measures for facilitating transborder cooperation, border search operations, mixed analysis working groups, joint investigation teams, mixed patrols along the state border and cooperation in common centers.

For more information: <http://www.pccseesecretariat.si/>

² The Police Cooperation Convention for Southeast Europe was ratified by all beneficiaries except Croatia and Kosovo.

WORKSHOP 1 – HOT PURSUIT

Summary of the written description of the case

In the neighboring country a bank was robbed that afternoon by two men. They carried and used guns to force the bank personnel to hand over a large amount of money. Not only was the bank personnel threatened, they also shot the bank manager in the leg before speeding away in a car, which was chauffeured by a third person. The license plate of the car is from your country (but turns out to be false).

The bank personnel alarmed the police immediately and were able to note the number of the license plate and give this to the police. Since the men were masked, they could not give a further description of the robbers.

The police could track the getaway car minutes after the robbery, and has started a hot pursuit. During the pursuit shots were fired at the police from the car, but the police was not able to make an arrest yet. Now the car is heading to the border and is about to enter your country. There is no possibility to arrest them before the border crossing and it is not possible for the border control police either to stop the car.

Work in smaller groups

The participants were divided into four smaller groups. In each group the participants from two different countries were present.

The group division was the following:

- 1) Albania, Kosovo
- 2) Macedonia, Serbia
- 3) Bosnia and Herzegovina, Croatia
- 4) Bosnia and Herzegovina, Montenegro

Each group received the written case description and the task to discuss the different possibilities of international cooperation in their country. The aim of the workgroups was to find best possible solutions and best practices, which required among other tasks, the task to identify and outline the mutual legal bases (ratified international conventions and similarities and differences in the national legal frameworks) and possibilities of cooperation under it and to underline the possible gaps

Case solutions

GROUP 1

Albania:

According to the opinion of the participants from Albania there would be no problem in the international cooperation in such a case. The prosecutor should be contacted directly or via ILECU³ contact point. The Albanian prosecutor would act on the basis of the telephone call, but would require the details of the case. All additional information could have been provided over the telephone. After the arrest the prosecutor would start a criminal procedure in the court to put the perpetrator into custody. Then the extradition procedure could be started.

Kosovo:

The foreign prosecutor would have to inform ILECU or directly the competent authority. The international cooperation would have been done on the basis of bilateral agreements (Macedonia, Croatia, and Albania). The perpetrators would then be stopped, arrested and brought in front of the investigation judge with the proposal to put them into custody. The proposal would be made on the basis of the received information from abroad. But because the perpetrators also committed a crime in Kosovo, that would also be the reason for custody. For the potential extradition there is a special extradition remand in custody up to 40 days. The search of the car could have been made on the basis of the oral order from the court.

GROUP 2

Serbia:

There is no bilateral agreement announced by the Police Cooperation Convention for Southeast Europe that would allow foreign police to make an arrest on their soil.

³ International Law Enforcement Coordination Units

Therefore an arrest would be made by the Serbian police on the basis of the criminal offences committed on the Serbian soil (carrying of weapons, unlawful transit over the state boarder, etc.). After the arrest the embassy and the investigation judge would be notified.

The prosecutor would let the police to handle the case until the arrest on their own discretion and would not intervene. Only after the arrest the prosecutor would give guidelines to police.

The country where the robbery was committed would have to make a formal request for the extradition. Just an oral request would not suffice. On the basis of the 2nd protocol the written MLA request would have to be sent via e-mail or fax and afterwards a regular formal request would have to be sent also. This request would have to include a request for the search of the car that would be temporarily seized.

The Serbian police would propose to the investigation judge for the car search.

A short report on the investigation of the crime scene (crime-scene results) of the robbery would be enough to start the procedure of extradition and car search in Serbia.

The evidence has to be collected in accordance with the laws of the country where the investigative measure is carried out.

Macedonia:

Macedonian prosecutor would act in the same way as in Serbia. With the addition that Macedonia has a bilateral agreement for extradition of their nationals with some of the countries in the region, namely, Croatia, Serbia and Montenegro.

In Macedonia an oral order for the search of the car can be issued in urgent cases.

The evidence has to be collected in accordance with the laws of the country where the investigative measure is carried out.**GROUP 3**

Croatia:

Foreign police would not be allowed to make an arrest. There would be problems with the arrest because the police would have to specify the criminal offence at the moment of the arrest and give the explanation to the arrested person.

The Croatian police can detain a person for six hours without making an arrest. In this time a request for international legal assistance can be sent. Without the request and documentation (evidences) the court would not allow the arrest.

But the prosecutor could make an official note of the information acquired over the telephone and such an official note would be sufficient ground for the arrest.

In accordance with the national law on international cooperation the foreign authorities can make a request for arrest even before they send a formal request for extradition. The conditions are: existence of a criminal offence and that later a formal request will be sent. An arrest up to 40 days can be made in this manner.

If it is a criminal offence, for which the penalty of more than 5 years imprisonment is prescribed, the Croatian prosecutor would start their own proceedings even if the foreign country would not request extradition.

Bosnia and Herzegovina:

There is no bilateral agreement that would allow foreign police to make an arrest on their soil.

In Bosnia and Herzegovina there would be no problem with the arrest from the side of BiH police. The perpetrators can be detained up to six hours without specifying which criminal offence they have committed. They could also be arrested on the base of the criminal offences committed on the BiH soil (carrying of weapons, etc.). The police arrest can last up to 24 hours.

The police can make a basic search of the car without a court order (plain-view). For a more thorough search a court order must be issued. The order can in urgent cases be oral and later written.

The perpetrators would be detained with the intention of a later extradition.

In Bosnia and Herzegovina the cantonal or district prosecutors office would have jurisdiction.

The prosecutor would monitor the collection of the evidence

The transmission of evidences from Bosnia and Herzegovina would be done on the basis of a regular request for international assistance.

The extradition would be difficult in the beginning, because the perpetrators are not known.

Extradition of nationals is not possible.

GROUP 4

Bosnia and Herzegovina:

The case solution was the same as for Bosnia and Herzegovina in the group 3.

Montenegro:

The case solution was the same as for Bosnia and Herzegovina.

The case would be in the jurisdiction of the Higher Prosecutors office.

The police arrest can last up to 12 hours.

WORKSHOP 2 – Traffic in Human Beings

Summary of the written description of the case

Austrian police authorities are investigating the trafficking in human beings of an organized criminal group operating in Austria and Bosnia and Herzegovina, but also in all the other countries in the region.

The phone tapping in Austria reveals that the prime suspect, a man with dual citizenship (Bosnian and Austrian), runs a brothel in Sarajevo and in Vienna. The women who are working in the brothels are from Croatia, Serbia, Kosovo, Montenegro, Macedonia and Albania. They are approached with by members of the criminal group in local bars with job offers.

Some of the women living in Kosovo have the Serbian nationality, others have the Albanian nationality.

One of the informants from the Austrian police authority told his commanding officer that he has the possibility of infiltrating an undercover agent (UC) into the organized criminal group. The UC could be introduced as a close relative and hired in sequence by the organized criminal group as a driver for transporting women to BiH and Austria.

The Austrian prosecutor requests the assistance of all the countries (BiH, C, S, K, M and A) involved to allow the UC to enter their country, get in touch with the women hired by the criminal group, and bring the women to BiH or Austria. Austria guarantees that the women – after arriving in Austria – will not actually work in the brothel and be allowed to return home.

Working groups

The participants were divided into four working groups. In each group the participants from two different countries were present.

The group division was the following:

- 1) Bosnia and Herzegovina, Albania
- 2) Bosnia and Herzegovina, Kosovo
- 3) Serbia, Croatia
- 4) Montenegro, Macedonia

Each group received the written case description and the task to discuss the different possibilities of international cooperation in their country. The aim of the workgroups was to find best possible solutions and best practices.

Case solutions

GROUP 1

Bosnia and Herzegovina:

The Bosnian prosecutor would act on the basis of the Council of Europe Convention on Action against Trafficking in Human Beings.

In Bosnia and Herzegovina such a case would be in the jurisdiction of Special Department for Organized Crime, Economic Crime and Corruption in the Prosecutor's Office of Bosnia and Herzegovina.

The prosecutor would make a parallel investigation and during this process the evidences would be exchanged with the use of MLA requests.

On the basis of the parallel investigation the prosecutor would decide on joining a JIT. It would be preferable that Austria would go to the Eurojust for the creation of the JIT, because then the JIT could be financed by Eurojust. Also Bosnia and Herzegovina can suggest to the Eurojust to create a JIT.

In such a case personal contact is critical. The regular way would be too formalistic and would not work. Direct contact between the prosecutors from all countries involved would be necessary.

The Bosnian prosecutor would require the statements made by the prostitutes.

For the Bosnian prosecutor it is not relevant if the person had known that she will be prostituted or not, because the Penal code of Bosnia and Herzegovina explicitly criminalizes both situations as trafficking in human beings.

A controlled delivery of human beings is/would not be allowed.

Albania:

In urgent cases as this one, the Albanian prosecutor would send a request for international legal assistance at the same time through a direct contact and via Ministry of Justice.

The prosecutor would act in the same manner as the prosecutor from Bosnia and Herzegovina.

In Albania there would be no problem if the undercover agent would be from Kosovo.

If the persons would know that they will be prostituted that would change the legal qualification, but the criminal procedure would stay the same.

The evidences would be acquired over the Ministry of Justice. The prosecutor would then check the legality of the evidence and the legality of the evidence gathering procedure.**GROUP 2**

Bosnia and Herzegovina:

The general solution was the same as the solution of participants from Bosnia and Herzegovina in group 1.

Additionally the participants from Bosnia and Herzegovina explained that due to the fact that Bosnia and Herzegovina did not recognize the independence of Kosovo, no formal cooperation is/would be possible.

On a practical level this would mean, that an undercover agent from Bosnia and Herzegovina could go into Kosovo, but an undercover agent from Kosovo cannot go into Bosnia and Herzegovina.

A possible solution would be that the undercover agent would be from Albania or Austria, and then there would be no problem for the undercover agent to also work in Bosnia and Herzegovina.

Also Bosnia and Herzegovina could not be in a JIT together with Kosovo.

There would also be a language barrier in the cooperation between these two countries.

The evidence would have to be officially transmitted via Ministry of Justice, but could at the same time be sent by e-mail. The MLA request would have to be sent in Albanian language.

Kosovo:

Due to its specific status, Kosovo is did not sign any of the conventions mentioned by the other participants. But the prosecutor from Kosovo would nevertheless act on the basis of the mentioned conventions.

The prosecutor would use the Police Cooperation Convention for Southeast Europe and their national Criminal Procedure Code.

For the prosecutor there would be no difference if the persons had known that they would be prostituted.

GROUP 3***Serbia:***

The prosecutor from Serbia would act on the basis of the United Nations Convention against Transnational Organized Crime, the Police Cooperation Convention for Southeast Europe and relevant bilateral conventions.

In such cases police would make the first contact. Then the Serbian police would suggest to the Serbian prosecutor to acquire an order for special measures (undercover agent). The prosecutor would give a proposal to the competent judge who would decide on the proposal.

The proposal to start special investigative measures must be based on reasons for suspicion that the criminal offence, for which special investigative measures are foreseen by the criminal procedure code, was committed.

An undercover agent of foreign nationality can work in the territory of Serbia if there is reciprocity.

The reports on the activities of the undercover agent would have to be given to the pretrial judge.

The Serbian prosecutor would, when cooperating with Bosnia and Herzegovina, create a JIT on the base of the 2nd protocol to the European Convention on Mutual Legal Assistance in Criminal Matters.

A controlled delivery of human beings is/would not be allowed in Serbia because of the definition of such measure in the Serbian Criminal Procedure Code (art. 181 of the Serbian Criminal Procedure Code regarding controlled delivery refers to shipments, i.e. the terming used does not allow the interpretation according to which controlled delivery of human beings would be possible under Serbian law).

Each country would arrest the perpetrators that would be found in the territory of their state.

Croatia:

The Croatian prosecutor would act similarly to the Serbian prosecutor.

The Croatian prosecutor would additionally act on the basis of the United Nations Convention against transnational organized crime and the bilateral agreement with Austria.

For the use of a foreign undercover agent the Croatian prosecutor would put a proposal to the investigation judge. Reciprocity is not required, but a permission by the Croatian Ministry of Interior would have to be given for a foreign undercover agent to work on the territory of Croatia.

For the cooperation with Bosnia and Herzegovina the prosecutor would act on the same basis and also on the basis of bilateral agreement with Bosnia and Herzegovina.

A controlled delivery of human beings is allowed, but would be avoided if possible because of the risks involved.

GROUP 4

Montenegro:

The Montenegrin prosecutor would act on the basis of the Council of Europe Convention on Action against Trafficking in Human Beings, the 2nd protocol to the European Convention on Mutual Legal Assistance in Criminal Matters and the Police Cooperation Convention for Southeast Europe.

The cooperation would be easier with Bosnia and Herzegovina than with Austria, because it is closer and the cooperation could be more direct.

The prosecutor would make a parallel investigation and continue with the investigating measures that were started in Austria.

In cases dealing with trafficking in human beings and organized crime special police measures can be used.

Macedonia:

The solution would be the same as in Montenegro.

In addition they would first have a meeting with the Austrian prosecutor.

The cooperation with Austria would be done through the Ministry of Justice, as the Austrian authorities have been experienced as fast and expeditious.

WORKSHOP 3 – A simulated Letter rogatory

Summary of the written description of the case

*Requested legal assistance by the Vienna Regional Court for Criminal Matters
On behalf of the Vienna Public Prosecutor's Office (number: Sta-209384-10) the Federal Criminal Police Office Vienna (number: B-0815-10) is, in accordance with Drug trafficking Act: § 28 a, carrying out a police investigation against Austrian citizen Josef M., born on 23 August 1963 in Vienna, resident in 1020 Vienna, Donaubrücke 122, and others with regard to drugs trafficking as part of a criminal organization.*

M. is suspected of heroin trafficking from Eastern Europe to Austria together with so far unidentified persons at least since July 2010. M. regularly travels to Montenegro and BiH to meet with so far unidentified persons to discuss the trafficking of heroin. The wiretaps in Austria have revealed the following information:

The arrangements about the individual smuggling cases are being made by M. personally at an undisclosed location in Montenegro with a man called "Bato" and in BiH with a man called "Muje", , who are responsible for organizing the heroin transports by lorry drivers to Germany and the Netherlands. The identity of these persons are not known, but the Austrian investigation has revealed their phone numbers (annex A).

The wiretaps also reveal that (large quantities) of heroin are stashed in an unknown location in Kosovo and brought over the border to either Croatia or Serbia by unknown persons, where it is handed over to lorry drivers from Macedonia and Albania. The lorry drivers are using custom built compartments in the cabin of the lorry to hide the drugs, but also have (corrupt) contacts at some of the border crossings to avoid inspections (annex B).

A lorry driver, Serdjan Ivanic, d.o.b. 12 June 1977 in Skopje, who probably is working for the organisation of M., has recently been arrested in Germany with 50 kg of heroin hidden in a secret compartment of his lorry. Although mr. Ivanic expressed at first a willingness to cooperate with the police and has given a description of the place where he received the drugs in Serbia and Croatia (on an earlier trip), he has later refused to make more statements because his family in Macedonia had received threats. In phone conversations M. has made (veiled) references to the arrest of Ivanic and the necessity to support his family (annex C).

Requested assistance

Based on the United Nations convention on Transnational Organized Crime, the European Convention on Mutual assistance in Criminal Matters, the United Nations Convention against Corruption and the Police Cooperation Convention for Southeast Europe, you are requested to :

- Identify the members of the criminal organization*

- *Intercept communications between members of the criminal organization*
- *Surveillance of members of the members of the criminal organization Intercepting heroin transports*
- *Identify contacts of the members of the criminal organization with border authorities in relation to corruption*
- *Undertake all the investigating measures necessary to gather evidence against members of the criminal organisation*

Working groups

The participants were divided into two working groups. In each group the participants from four different countries were present.

The group division was the following:

- 1) Albania, Kosovo, Bosnia and Herzegovina, Macedonia
- 2) Serbia, Croatia, Bosnia and Herzegovina, Montenegro

Each group received the written case description and the task to discuss the different possibilities of international cooperation in their country. The aim of the workgroups was to find best possible solutions and best practices.

Case solutions

GROUP 1

Albania:

The prosecutor would only execute the MLA request. The prosecutor from Albania would be in constant contact with the Austrian prosecutor and would follow the instructions from the Austrian prosecutor.

The presented case is at the moment not big enough to create a JIT. If enough new evidence would be gathered to justify a JIT, then the Albanian prosecutor would consider joining a JIT.

Kosovo:

The prosecutor from Kosovo would start a parallel investigation.

Bosnia and Herzegovina:

The cooperation between Bosnia and Herzegovina and Kosovo is not possible, therefore the Bosnian prosecutor would send a MLA request to Albania to be forwarded to Kosovo.

Macedonia:

Macedonia would try to start a JIT with the participation of Eurojust.

Solution of the group as a whole:

The prosecutors would start with a parallel investigation, trying to determine the identity of the perpetrators.

The police would exchange the information on a daily basis over the telephone.

On the basis of the results of the parallel investigations a decision on the establishment of a JIT would be met.

The cooperation with Kosovo would be formally done over Albania.

GROUP 2

Serbia:

The prosecutor would decide in the same way as the solution of the group 2 as a whole is presented.

Croatia:

The Croatian prosecutor would open his own (national) criminal investigation in this case and would make a request to the Austrian prosecutor and Austrian police for information and documents.

The prosecutor from Croatia has a possibility to start a JIT through Eurojust and also to receive Eurojust funding for it.

Bosnia and Herzegovina:

The prosecutor would decide in the same way as the solution of the group 2 as a whole is presented.

Montenegro:

The MLA request all attached documents would be sent to the police, so that the police would start their procedure.

Special police measures would be used in accordance with agreement with other countries. Also a controlled delivery is an option.

Upon the received MLA request a national investigation would be started.

The multi-national investigation would start with a coordination meeting. Then a parallel investigation would take place in all of the countries. On the basis of the results of the parallel investigations a decision on the establishment of a JIT would be met.

It would be preferable that the Austrian prosecutor would start the JIT procedure through Eurojust.

Solution of the group as a whole:

The countries have the same legal base for international cooperation.

First the countries would make a parallel investigation. The countries would inform the other countries about the tactics of their parallel investigation.

Then they would decide to establish a JIT, because of so many countries involved. The JIT would be organized within Eurojust.

The investigation would have to be coordinated and all solo actions would have to be avoided, not to endanger the investigations in other countries.

WORKSHOP 4 – Best practices

At the end of the seminar a workshop on best practices in international cooperation took place.

Work in smaller groups

The participants were divided into two smaller groups.

The group division was the following:

- 1) Albania, Kosovo, Macedonia
- 2) Serbia, Croatia, Bosnia and Herzegovina, Montenegro

The objective of the workgroups was to underline best practices in international cooperation of the beneficiaries within the group.

Good practices

GROUP 1

Albania:

Evidence from abroad must be the original ones or a verified copy therefore it is a good practice that the prosecutor from Albania explains this to the counterpart in advance and it also mentioned in the letter rogatory to avoid potential problems.

For international legal cooperation with the USA they have a special form template for MLA request and in this way the prosecutor does not forget to write something important in the request. In this way no additional information is required and time is saved.

It would be a good suggestion to have such an instrument also for cooperation with other countries.

The Albanian prosecutor uses the ILECU network to get in direct contact with other countries in the region.

Macedonia:

Macedonia has bilateral agreements on international legal assistance with all countries in the region.

The Macedonian prosecutors first share the information directly and informally and afterwards they make an official request for the formal transmission of the information and evidences.

GROUP 2

Montenegro:

Montenegro has a special system with the use of which it is possible at any moment to determine what cases are open against a certain perpetrator. With the use of this system the foreign prosecutor can be referred to the prosecutor who is already working on an open case against the perpetrator.

Bosnia and Herzegovina:

The Bosnian prosecutor contacts the foreign prosecutor directly and receives the evidence from him directly. Then he goes through all the received evidence and decides what needs for his criminal procedure. Upon deciding, the Bosnian prosecutor makes an official MLA request to the foreign prosecutor (over the Ministry of Justice) just for the relevant evidences. The Bosnian prosecutor specifies in the letter rogatory which evidence he would like to receive. In this way there are no unnecessary evidence being sent.

Best practices of the group as a whole:

The direct cooperation between polices officers is very well established.

It is a good practice to use the SECI center for the organization of the first coordination meeting.

It is very useful to have coordination meetings for the direct exchange of information, MLA requests and the exchange of evidences.

One coordination meeting must be reserved for agreement on the coordinated arrests and house searches in different countries.

The use of Police Cooperation Convention for Southeast Europe for the undercover agents has proven to be a good practice.

Participants had good experience with request for freezing of property sent abroad.

The participants recognized the importance of knowledge about the criminal procedure and standards for different investigative measures in the neighboring countries and would like to have documentation on this.

Contact points for international cooperation must be available at all time, meaning he is on standby all the time.

An European arrest warrant sent over the INTERPOL channel has proved to be effective and could be used also for other requests.

REMARKS FROM THE SEMINAR

REMARKS FOR WORKSHOP 1

Potential problems in international cooperation

The “who to call?” problem is the first and one of the most serious ones in international cooperation. All participants have expressed the need for good and fast cooperation. It is less likely that a complete stranger will make the effort to fulfill all the requested tasks than a person you know and you already met. Therefore it is of great importance to have a personal contact you can turn to for help with a request for international legal assistance.

In addition it is in some countries hard to determine the right authority that would have jurisdiction. An example would be Bosnia and Herzegovina with three parallel systems of prosecution. It can take a lot of time to determine who to contact. That can be a real problem in urgent cases.

The South-East Europe region seems rather homogenic from the language point of view, but is in fact composed of different nations with different languages. The most different certainly being the Albanian language. This “language barrier” can be a major stumbling stone. The translation of the request, evidence and other communications requires a lot of time and money.

Additionally the translation service would have to be available 24/7 and all year around, due to the fact that some of the requests and communications are urgent and need to be addressed right away. A good proposal was to establish an internal translation service inside the prosecutor service, which would be available at every moment and would on

the long run be cheaper than out-sourcing. Such a decision has however to be made on the base of an economic analysis and with consideration of all positive and negative impacts of implementing such a service.

At the moment the prosecutors are sending their requests for international legal assistance via Ministry of Justice or the General prosecutor's office, although they have – in the majority of cases - the legal possibility to send requests directly to a prosecutor or judge in another country. The main reason for this is that the prosecutor's offices do not have enough budget to have the requests translated. By using the channel of the MoJ or General Prosecutor's office this problem is taken care of.

This means however that time is lost, but also control over the request.

Arrest by foreign police officers:

In many beneficiaries an arrest by foreign police officers in a hot pursuit situation would pose a problem. The SEE manual is not clear on this topic.

Evidence gathered by the police: In Albania the car search is/would be executed on the decision of the police and no court order is required. Also the car search can be done for all criminal offences- meaning also the offences where the car was not a tool for committing the offence. This is a potential hazard for the use of evidence, collected in this manner, in other countries.

In urgent cases the police in Kosovo can make a search of the person without an order from the court or the prosecutor and they only have to inform them afterwards. This is a potential hazard for the use of evidence, collected in this manner, in other countries.

Communications between prosecutors:

Lack of information can create problems at the receiving side, because the requested prosecutor cannot make the best possible decision without have all crucial information. Therefore it is very important that the requesting party (although in a hurry) prepare and transmit all the important information in order to avoid unnecessary need for

supplementation with additional information. Such supplementations cost unnecessary time and effort that can result also in the loss of interest of the requested prosecutor.

Best practices in international legal cooperation

The participants expressed that the best solution and also the best practice dealing with the problem of the potential impersonality of the international legal cooperation and all the problems that derive from this (lack of interest, delay in execution, etc.) is to have a personal contact, meaning that the request is sent to a prosecutor you already met. Such approach regularly turns out more fruitful than a contact with a prosecutor that does not know the requesting prosecutor.

An example of a good practice was presented by participants from Albania and from Kosovo, who mentioned the use of ILECU (International Law Enforcement Coordination Units) network.

Gathering personal contacts or networking is therefore an important part of legal cooperation that should not be neglected. Networking can be achieved on multi-national and also on bi-national events. The seminar in Podgorica was also one of the stones in the mosaic of such international bonding. It would be necessary to have more of these events and perhaps on a regular basis.

In Croatia in the Prosecutors Office a translator for the English language is regularly employed and is at all times at the disposal of the prosecutors. This is especially helpful in urgent cases where it is important not to lose time on the translation.

Observational remarks

All the countries have in their legislation provisions on the so called "citizen's arrest". Although such a provision would theoretically enable the police officers from a neighboring country to make the arrest if the conditions for citizen's arrest provided under the applicable national law are fulfilled, this would be considered a political

incident in the majority of the participating countries. There would have to be a bilateral agreement between countries that the police from a foreign country could make an arrest in a different country.

The majority of the participants decided at first that it would be up to the police to decide on the arrest and that they would act only after the arrest would already be made. The involvement of the prosecutor “post-festum” could present a problem, because the prosecutor would have to deal with the situation as it is and only repair the earlier actions by the police.

Only after some encouragement from the organizers the participants started to search for different possibilities for guidance to the police on the arrest procedure and the search of the car

All participating countries (except Kosovo) have signed the 2nd additional protocol to the European Convention on Mutual Legal Assistance in Criminal Matters. According to the provisions brought forth by this convention protocol the request for international legal assistance can be made through any electronic or other means of telecommunication, but the requesting Party must be prepared, upon request, to produce at any time a written record of it and the original. However, any Contracting State, may by a declaration addressed at any time to the Secretary General of the Council of Europe, establish the conditions under which it shall be willing to accept and execute requests received by electronic or other means of telecommunication.⁴

⁴ Republic of Bosnia and Herzegovina has declared that all requests and other written notices related to Article 4, paragraphs 1 to 6, are to be delivered to the Ministry of Justice of Bosnia and Herzegovina, as the central authority and that in case of direct addressing of urgent requests in line with Article 4, paragraph 7, of the Second Additional Protocol, copy of the request will be delivered concurrently to the Ministry of Justice of Bosnia and Herzegovina.

Republic of Croatia declares that all the requests and other communications referred to in paragraphs 1 to 6 of Article 4 of the Second Additional Protocol should be forwarded to the Ministry of Justice.

Republic of Macedonia declares that all requests and other written notices, except urgent requests, should be delivered to the Ministry of Justice as the competent authority and that it will accept and execute requests received by electronic or other means of telecommunication, whereupon a copy of that requests is sent by facsimile and the original is submitted by post.

The participants focused primarily and mainly on the fact that a prosecutor from a neighboring country requested international legal assistance. In this focus the majority of the participants did not take into account that the information received might also be a base for their own criminal procedure under certain conditions. All of the participating countries have provisions in their national Criminal Procedure Code that a national or a foreigner can be criminally prosecuted if he commits, under conditions provided under national law, a criminal offence abroad and is found on the territory of their country. This is the so-called Universal jurisdiction principle

The information that would be sent from the prosecutor of the country, where the robbery was committed, to the prosecutor of the country, where the perpetrator was apprehended, could in this way probably also be understood as a “spontaneous exchange of information” under the 2nd protocol to the European Convention on Mutual Legal Assistance in Criminal Matters.

REMARKS FOR WORKSHOP 2

Potential problems in international cooperation

There are different procedural guarantees in the criminal procedure of the beneficiaries when working with undercover agents. An example of this is which person knows the real identity of the undercover agent – in Croatia this would have to be a judge and in Serbia it would be a supervising officer (and the judge would not know the real identity). There is also a difference between countries when dealing with the duty of the undercover agent to testify in court. In some countries it is obligatory that the undercover agent appears in court in person (although his real identity is hidden) and in others only the supervising police officer must testify.

There are different standards to start certain investigative measures in different countries. In general it is not considered to be a problem, because the legality of the

evidence gathering procedure is judged in accordance with the national law of the country where the evidence was gathered. But in some cases the court can decide that the evidence gathering process did not meet the basic standards of human rights and therefore the evidence is excluded.

Some beneficiaries have legal limitations towards the use of “controlled deliveries”. This needs to be addressed and discussed in cases where international cooperation is requested or needed.

Serbia and Bosnia and Herzegovina have not recognized the sovereignty of Kosovo and therefore cannot cooperate in a JIT together with Kosovo. Also the undercover agent from Kosovo will not be allowed to work on the territory of these two countries.

A possible solution would be cooperation with Albania (or any other country that does recognize Kosovo) as a mediator in the cooperation. Also an undercover agent from Albania could be used instead.

The countries in the region have very different provisions on the detention and remand in custody, for example: Montenegro has a 12 hours of police detention, then 8 hours of detention by the prosecutor and then the arrested person is brought in front of the investigation judge; on the other hand Bosnia and Herzegovina has a 24 hours of police detention and then the person is brought in front of the investigation judge. This has to be considered carefully when preparing coordinated arrests in different countries.

Best practices in international legal cooperation

The best practice presented by the participants for such cases would be firstly to have a coordination meeting to establish what the case is about and what is the already collected evidence and then to start a parallel investigation with direct communication and exchange of information between prosecutors. On the basis of such an investigation the parties could make a decision on the creation of a JIT. In this way countries can first

examine the received documentation and it is also much easier for the countries to later define the object of the JIT agreement.

The best solution for the JIT would be that an EU Member state, country with an agreement with Eurojust or Eurojust itself would be in the JIT and therefore the JIT would have access to Eurojust funding.

The Macedonian prosecutor was in one case present at a hearing of a witness in a foreign country with the purpose that this testimony would be used in the criminal procedure in Macedonia. The Macedonian court then accepted the testimony without any objections.

The Montenegrin prosecutor had a successful JIT with Spain. All the evidence was transmitted with the use of MLA requests. At the beginning of the criminal procedure in Montenegro, key evidence from Spain was missing. The deadline for submission of proposal for the beginning of the criminal procedure was almost up. The Montenegrin prosecutor contacted the Spanish prosecutor and asked for the evidence to be sent via fax. The Spanish prosecutor sent a copy of the document via fax. The court in Montenegro started the criminal procedure on the basis of the copy of the document. The prosecutor from Montenegro then during the criminal procedure acquired this evidence the formal way, meaning with the use of MLA request.

The cross-border trainings for police and prosecutors can be a good tool to learn about different procedures in neighboring countries. The results of cross-border cooperation after such training are better, because the police and the prosecutors know what to expect and how to specify their requests. Such trainings can also be a beginning of the harmonization process of criminal procedure legislation in the participating countries.

The coordination meeting of prosecutors from the involved countries is essential when the use of special police measures is foreseen or are such measures already being used

in one of the countries. National legislations of all participating countries must be considered. After such a consideration, a decision on a common approach must be met.

The prosecutor from the country where the evidence will also be used can participate in the evidence gathering procedure abroad and give specific information on the requirements of the procedure in his country. The authorities of the foreign country will usually have no objections, because these will only be additional guaranties, and will reject the requests only if they would violate their criminal procedure code or would endanger the public order.

At the coordination meeting also tactics should be discussed, for example: if some country should not arrest a certain perpetrator before another country has finished the investigation or is gathering evidences with the use of special police measures; or on the other hand one of the perpetrators can be arrested and with the use of special police measures evidences from the other perpetrators, who were not yet arrested, can be gathered.

For the coordination meeting enough time must be reserved, because a day or two is needed to examine and study the already gather evidences and to check the requirements for the evidence gathering process in your national legislation.

A realistic deadline for the arrests of all perpetrators should also be set. All of prosecutors should make sure that they gather all needed evidence for their case before the deadline for arrest.

In Bosnia and Herzegovina the prosecutor in such big cases uses before the arrest the special police measure of secret surveillance with the intention that at the time of the arrests the police knows the whereabouts of the perpetrators and to prevent their potential getaway.

Requests for legal assistance (letter rogatory) can be brought directly to the coordination meeting. With direct contact some of the issues may be resolved immediately.

Evidence can also be exchanged at the coordination meeting. In this way time and money is saved.

At the coordination meeting the presence of both prosecutors and police officers is desirable. In this way all aspects of the cooperation can be taken into account and best possible and plausible solution can be decided on.

Observational remarks

The majority of the beneficiaries expressed that in their country they would immediately execute a request from Austria, because this is a big European Union Member state. The countries would cooperate even if the cooperation from the EU Member state would not be so good, meaning if there would be no reciprocity.

From the legislative point of view there is no reason for such distinction (positive discrimination) in execution of international legal requests.

Only after some encouragement from the organizers the participants also took into account the possibility that each country can suggest to a country represented at Eurojust to set up a JIT and therewith enables the Eurojust funding of the JIT.

The prosecutor from Croatia has brought up, that for a controlled delivery he would need guarantees from the other countries, where the transport of human beings would continue, that the countries will arrest the perpetrators and secure the human rights of the transported humans. Such guarantees would be prerequisite for the Croatian prosecutor to allow transport through his country.

Such need could cause problems, because if all countries would demand such guarantees in advance none of them would be the first to give the order to allow a controlled delivery. The countries would be at a standstill. In real life situation one of the

countries would simply have to be the first to allow such a transport and the other countries would then follow.

REMARKS FOR WORKSHOP 3

Potential problems in international cooperation

Serbia and Bosnia and Herzegovina have not recognized the sovereignty of Kosovo and therefore cannot cooperate in a JIT.

The participants came up with the following possible solutions:

- 1) The formal establishment of two different JITs. In one JIT there would be Kosovo and the countries that recognized its independence and the other one with all countries except Kosovo. This would be a formal structure, but on the technical (where the problems usually do not exist) level the cooperation meetings and the exchange would be made at the same time and in the same place. The evidence exchange would be formally done with the transfer of evidences between the countries that can cooperate in this way all information and evidences and all tactical decisions could be done even with the legal barriers between certain countries.
- 2) JIT with all countries except Kosovo would be created. Then one of the countries participating in the JIT would have a parallel investigation with Kosovo. Preferable that country would be Albania, because of the same language. The country cooperating with Kosovo would then be a bridge between the JIT and Kosovo and would provide Kosovo and all the other countries with the information and evidences needed for a successful criminal procedure

Nevertheless the problem between Serbia and Kosovo or Bosnia and Herzegovina and Kosovo could not be resolved if the case would involve only perpetrators from these two countries.

Bosnia and Herzegovina has presented an extreme case in which the Bosnian undercover agent has entered Montenegro and worked there on a drug case. During his work he also offered some drugs and the Montenegro police arrested him for the criminal offence, because they were not informed of his undercover work.

In the opinion of the Bosnian prosecutor this would have been avoided if a JIT would be established.

If the criminal investigation in the district prosecutor's office on the basis of general jurisdiction and the jurisdiction later changes due to evidences of organized crime, it can happen that with the change of the jurisdiction also the prosecutor working on the case is changed. In this way all informal information and knowledge about the case can be lost.

Best practices

In a parallel investigation it is very helpful if the countries inform the other countries which are working on the same case, about the tactics of their parallel investigation.

In Croatia a district prosecutor can be assigned to the specialized prosecutor's office (USKOK) in a certain case, that was started at the district prosecutor's office on the basis of general jurisdiction and the jurisdiction later changed due to evidences of organized crime. In this way the knowledge about the case (that is perhaps not in the file documentation) is not lost. Other beneficiaries have the same system.

Observational remarks

For the establishment of a JIT it is not necessary to be working together with an EU member state or Eurojust. The legal base for the JIT is the 2nd protocol to the European Convention on Mutual Legal Assistance in Criminal Matters and can therefore JIT's are possible with all parties to this protocol. It is however certainly helpful if Eurojust is involved, due to all the experiences it has and the potential financial support it can provide.

REMARKS FOR WORKSHOP 4

Potential problems and solutions in international cooperation

Different countries have different standards for evidence gathering and the use of special police measures.

In Macedonia the prosecutor had a case in which he required evidences gathered with the use of special measures in a foreign country, but could not get these, because the evidence was already destroyed due to time limitation in the foreign legal provisions on evidences gathered with the use of special measures. This was an example of lack in communication and knowledge between different countries.

The cooperating prosecutors should in advance explain to their counterparts what the procedural rules are in their country and what guarantees should be used when using different procedures. The counterparts should then consider the legal provisions of the other country.

Bilateral or multilateral educations and training on criminal procedure standards and legislation could be prepared. Also documentation on the different legal systems should be available for the beneficiaries

As was explained by the organizers, documentation on the countries within the European Union is available on the website of the European Judicial Network

There are also different perceptions on what different international cooperation should look like. That can lead to difficulties in communication and can also cause unnecessary disagreements.

On an international level a definition of different forms of international cooperation could be established in a shape of a manual or a different definition scheme. Also clear and precise articulation by the cooperating prosecutors is necessary.

The IT infrastructure in Macedonia should be improved to secure direct communication with prosecutors abroad.

In Macedonia the prosecutors that attend the international trainings sometimes do not share the received information with other prosecutors.

The participants suggested that prosecutors who attend the international trainings should write a report which would be accessible to all prosecutors.

In Kosovo they have problems with direct communication with foreign prosecutors. The communication over the electronic mail is fast and very helpful, but the security of such communication can be a problem.

The countries have to provide technical recourses for secure channels for direct communication. The organizers remarked that providing secure channels of information is part of the project.

In Kosovo at the moment the JITs are not regulated with a national law or international convention. It was agreed that the National law on Mutual Legal Assistance should provide for JITs.

Observational remarks

The international cooperation in cases that are classified confidential should be done via secure channels. The majority of the countries do not use secure channels for such communication.

At this moment it is preferred to use parallel investigation instead JIT, because the beneficiaries do not have enough experience and knowledge about JITs.

An idea of a manual on the exchange of information and evidence exchange has been suggested by the participants. This could prove to be very useful for the beneficiaries, but would have to be prepared on an international level, as to cover all beneficiaries in the same manner. One of the aspects of the manual could certainly be the different possibilities of the channel and form in which the information and evidence can be sent (for example: directly and unofficially, directly with a later official request, official request).

Swedish initiative provides a common legal framework for the effective and expeditious exchange of information and intelligence between EU States' law enforcement authorities. The intention is to simplifying the exchange of information and intelligence between law enforcement authorities. Something similar could also be prepared and used in the Southeast Europe region.⁵

⁵ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union

GENERAL REMARKS FOR ALL WORKSHOPS

All countries

At the beginning of the seminar all of the participants tried to solve the case only with the use of their national legislation. During the seminar their view widened and they started to find solutions to the cases also with the use/on the base of international treaties and other international legal possibilities applicable to their country.

This shift was a step towards good international cooperation, because it allows for more space to maneuver and to achieve the ultimate goal which is the fight against cross border crime.

Kosovo

Due to the unique status, Kosovo cannot sign any international conventions and therefore is not formal party to any international conventions. Although some of the European conventions apply directly through the constitution, this is not the case for cooperation in criminal matters. The basis for international cooperation are therefore bilateral agreements with Albania and Macedonia and the Criminal procedural code for all the other countries. The use of Criminal procedure code for international cooperation is in the opinion of the participants on the technical level not problematic. The use of the Criminal procedure code provides the legal ground for international cooperation but at the same time gives the individual/competent prosecutor the authority to decide whether to fulfill the international legal request or not. The prosecutor can unjustifiably reject the request and the requesting prosecutor will be left without a legal possibility "to force" the prosecutor or the country to fulfill his request. The only lever applicable will be the political/diplomatic one. Consequently the execution of the international legal requests depends on the good will of the deciding prosecutor or judge.

All countries

Official requests for international legal assistance are sent via Ministry of justice. This route usually takes much more time than from prosecutor to prosecutor, but all of the participants feel that they should involve the MoJ, especially when dealing with evidence.

A solution could be that the letter rogatory is sent directly to the competent prosecutor via electronic mail or fax and at the same time an official letter rogatory is sent via Ministry of Justice. In this way the prosecutor will receive the request immediately, enabling him to start his procedure, and after receiving the official request the prosecutor can fulfill it without delay. The same can be done with the transfer of evidences, meaning they can be sent in both ways to enable the beginning of the procedure and at the same time meet all the formal requirements of the criminal procedure. This would especially be useful between countries where there is no language barrier and therefore translation is not (immediately) necessary.

Netherlands

In the Netherlands they have a special software program for composing requests for Mutual legal assistance (letter rogatory). The program is designed in the way that the prosecutor enters into the program the country he wishes to send the request to and the criminal offence and the program automatically gives him the legal base for the international legal cooperation. This program has been adjusted and adapted by Eurojust and would be to great advantage of the beneficiaries.