

## WAYS TOWARDS JUSTICE

---

### Advantages on the other side of the border

Josip Cule *Deputy General State Attorney of the Republic of Croatia*

**Nobody knows us as well as we do know ourselves, and there is nobody who knows the needs of state attorneys better than the state attorneys in other states do**

Esteemed colleagues, esteemed guests,

In my introductory statement I said that we should be proud of signing these Memoranda, and also of the results achieved after they had been signed. Perhaps somebody could see this is a blanket assessment, as a statement of courtesy, so it is necessary to point at the data and facts which show what this cooperation actually looks like, i.e. which show the actual "traffic" of requests for legal assistance among the individual prosecutor's offices. I think that a particularly interesting question is the extent to which these requests were met in full, how much they were only partly fulfilled or were not fulfilled at all, and it is interesting to assess the underlying reasons, and of course it is interesting to see whether it is possible to promote this cooperation.

Data that I have prepared for my contribution relate to the requests for legal assistance that were exchanged during 2006 among the state attorney's offices of Bosnia-Herzegovina, Montenegro, Serbia, and of course that of the Republic of Croatia; however, in order to show the significance of such cooperation collected were also data pertaining to the cooperation of the State Attorney's Office of the Republic of Croatia with all other states with which a similar Memorandum was signed. Although these are numerical facts, statistical data, which I think are in themselves rather dull, I do however think that the results are very interesting, that the results justify earlier statements, and that it will be interesting to hear them.

Before I give you these statistical data, I would like only to make a digression and compare requests for assistance filed in 2005 to those filed in 2006. There are a number of reasons why we did not prepare separate statistical data for the year 2005, namely, we did not sign these documents at the same time, so the request for legal assistance would refer to different periods, and, besides, the year 2005 was specific because, after a long time, it was then possible to have immediate cooperation, and the drawers of the state attorneys contained numerous cases in which such cooperation was simply necessary. Therefore, it was expected to have what happened in 2005, namely an exceptionally big number of requests for legal assistance was filed, whilst during 2006 the situation did significantly stabilize, now we already speak of requests for assistance in those regular cases, so in my view such cooperation can continue in the coming years. Therefore, I think that facts pertaining to 2006 really are representative, and they build a foundation upon which good quality conclusions can be made.

#### Statistical data

When processing the requests for assistance we collected data related to requests filed with the State Attorney's Office of the Republic of Croatia separately from those related to situations in which the State Attorney's Office of the Republic of Croatia was asking for legal assistance. Further on, we classified the data according to whether the requests were met, partly met, or not met at all. As said in the introduction, we dealt with the data separately for Bosnia-Herzegovina, separately for Montenegro, separately for Serbia, and all other prosecutor's offices were dealt with together.

Data related to the total number of requests for legal assistance filed with these state attorneys' offices, and their mutual relationship

During 2006 the State Attorney's Office of the Republic of Croatia worked on a total of 136 requests for legal assistance, out of which 79 referred to requests in which the State Attorney of the Republic of Croatia was asked to render legal assistance, and the State Attorney's Office of the Republic of Croatia asked for legal assistance in 57 cases. Generally, in terms of percentages, in 40% of cases the State Attorney's Office of the Republic of Croatia asked for legal assistance, and it received requests for legal assistance in about 60% of the total number of cases. It is important to note that these are requests for legal assistance founded on the Memoranda, while other requests for legal assistance based upon bilateral agreements, or upon the Convention on Mutual Assistance in Criminal Matters, were not dealt with.

Most frequent was the communication with the State Attorney's Office of Bosnia-Herzegovina, 62,5% of cases refer to this, following is the communication with the State Prosecutor's Office of Serbia with 25% of the total number of cases, and there is a smaller number of cases with Montenegro, during the whole year there were only 2,21% of these cases, and with all state attorney's offices there was a total of 1029% of cases. What do these data tell us? They tell us that 90% of the cooperation of the State Attorney's Office of the Republic of Croatia, on the basis of the signed Memoranda, relates to cooperation with prosecutors from Bosnia-Herzegovina, Montenegro and Serbia, i.e. as much as 88% of the entire cooperation refers to the communication with state attorney's offices of Bosnia-Herzegovina and Serbia.

Analysis of requests for legal assistance which were fulfilled, split into those which we filed and those that we received, shows that the majority of requests for legal assistance came from Bosnia-Herzegovina, a total of 75%, and from the Prosecutor's Office of Serbia came 14% of all requests.

The situation is similar also in regard to requests for legal assistance which the State Attorney's Office of the Republic of Croatia sent to other state attorney's offices – the majority was sent to Bosnia-Herzegovina, a total of 46% requests, and we sent 40% of requests to Serbia.

A glance at the number, or percentage, of requests for legal assistance pertaining to state attorney's offices of these countries, makes it in itself visible and clear how significant this Memorandum is.

Data relating to results achieved in legal assistance

Very interesting are also data relating to results achieved in rendering legal assistance, in other words, whether the relevant state attorney's office met the requests or not, or if it only partly met them.

We think that we can be satisfied also if we analyze the results from the aspect of whether or not the requests for legal assistance were fulfilled. The average for the State Attorney's Office of the Republic of Croatia shows that out of all received requests for legal assistance, or those issued, there is a total of 77% cases in which the requests were met, partly met were 6% of cases, and in 18% of cases containing requests for legal assistance these requests were not met.

If viewed by concrete state attorney's offices, the situation gives the following picture: in as much as 83% of demands from Bosnia-Herzegovina the requests were met, they were partly met in 10% of cases, and they were not met in 7% of cases. When the state attorney's office asked for legal assistance from Bosnia-Herzegovina, this was fulfilled in 74% of cases, and was not fulfilled in 23% of cases.

As regards cooperation with state attorney's offices in Serbia, received requests for legal assistance were fulfilled in 64 % of the total number of cases, and were not fulfilled in 36%. When the State Attorney's Office of the Republic of Croatia asked for legal assistance, the state attorney's offices in Serbia and Montenegro fulfilled the requests in as much as 87% of cases, and did not fulfill them in 13% instances.

Difficulties identified in the process of rendering – receiving legal assistance

Apart from these mentioned data which indicate that requests for legal assistance are met in a significantly high percentage, there is also a subjective impression that the requests for legal assistance were met within an adequate time span, but we think it is possible to further enhance this cooperation. The biggest obstacle to a higher percentage of fulfilled requests is, as a rule, related to the difference in the legal systems particularly in the case of Bosnia-Herzegovina and Croatia, or Serbia respectively. Namely, in Bosnia-Herzegovina the state attorney's office is that judiciary body which is conducting investigation, it governs the police to a significant extent, so that hence it is authorized to directly collect evidence, and everything that the state attorney's office does is representing evidence in the criminal proceedings. However, there is a different situation in the Republic of Croatia – the state attorney's office has very limited possibilities to directly collect evidence, namely such evidence as can be valid in the criminal proceedings. The state attorney's office can collect certain type of information, check certain data etc., however, it is very limited in interrogating either the suspects or the witnesses. A specific problem emerges in regard to persons which the State Attorney maybe wants to have interrogated, and there are no criminal proceedings conducted against these persons in the Republic of Croatia. In such cases there are limited possibilities for the prosecutors to issue subpoena for such persons as suspects, and similar is the case with summoning persons which would be in the status of a witness.

As a reason why the requests for assistance were not met there was frequently mentioned the impossibility to get into contact with the persons in question, most often because they did not have permanent or temporary residence in the Republic of Croatia.

However, one should hope that these problems are of a temporary nature, and that they can be overcome. In the Republic of Croatia has just been prepared a platform for changes in the criminal legislature, I have in mind the legislature related to criminal procedure. It can be expected that the State Attorney of the Republic of Croatia will have authority of a similar scope as that one in Bosnia-

Herzegovina, and this will then offer also huge possibilities for further cooperation with all other state attorney's offices.

Instead of conclusions

Results achieved build a stronghold for satisfaction, problems that we identified, we think, can be successfully overcome, sooner or later. We think we stand good chances for a further enhancement of our excellent cooperation, and to have our cooperation rapid and efficient.

I would like to say that our cooperation has one additional advantage, one feature different in relation to all other, classical methods for rendering international legal assistance in criminal matters. Namely, nobody knows us as well as we do know ourselves, and there is nobody who knows the needs of state attorneys better than the state attorneys in other states do. Also, nobody knows the everyday problems which the state attorneys face, as do the colleagues on the other side of the border. These are our advantages. Therefore, it should be of no surprise when we establish our cooperation very quickly, as we do not have to give to many explanations to one another.

And another form of cooperation has just started, the first cases are under work, and we think that this is the cooperation that will give magnificent results. It is the implementation of the Memorandum on cooperation in cases of war crimes, but this is a theme for some other Round Table.

#### **"Come on, Vaso, please"**

It was not such a long time ago, I made a phone call to my colleague Marinkovic in Bosnia-Herzegovina, and told him something like "Vaso, please, we have a tremendous pressure related to an event in Bosnia-Herzegovina, we expect intensive investigation, so if you have any notes in your files, please do send them as soon as possible." I had the notes until the end of that day. Similarly, a colleague from Bosnia-Herzegovina approached me saying: "We had a severe criminal offense tonight, we have information that the perpetrator could be having an apartment in the territory of the Republic of Croatia, and certain shoes in it". Of course that we got a search warrant for that apartment, that we took the clothes and shoes, and we sent them to the colleagues in the state attorney's office in Bosnia-Herzegovina. There are a number of such great examples with Bosnia-Herzegovina, and there are many similar examples also with the colleagues in Serbia. I often hear my colleague Mrdak, we really do settle many things by phone, for instance - whether our colleagues from Serbia should come to the County State Attorney in Vukovar and Osijek, and to have there prepared notes which they want to copy, or other things of interest to them, waiting for them; or that my colleague Mrdak organizes the arrival in Sombor of the colleagues from the War Crimes Department in the Republic of Croatia, to have the documents which interest them already there waiting for them to make a review or copy whatever they would choose. Not only do we agree on such types of cooperation, we also make a step further, so we organize for our colleagues from the Prosecutor's Office in Serbia a search of the documentation in the State Archives in the Republic of Croatia, they do the same for us when we have such a need, and exactly now there is a pending case which includes search of records in the Military-Historic Archives in Belgrade.

Hence, we have many great examples, and I do have the right to believe that our cooperation is successful, and that it can be even more successful.