

The Final Report of the Third Study Commission – Criminal Law

Taipei, Taiwan, September 2023

Introduction

The topic for this year's discussion in the Third Study Commission was *mutual cooperation in the investigation of criminal cases and in the presentation of evidence*.

35 countries had answered the Questionnaire. The responses were all relatively similar in their content. The group discussion was lively, thorough, and was participated in by delegates from a wide variety of nations.

Participating in the meeting in Taipei, Taiwan were delegates from the following countries:

Canada

Denmark

Australia

Taiwan

United Kingdom

United States of America

Ireland

Portugal

Italy

Austria

Greece

Guinea

Bermuda

Sweden

New Zealand

Switzerland

Liechtenstein

France

Israel

Philippines

Ecuador

Lithuania

Requests for Assistance, Generally

All of the completed Questionnaires indicated that, even in the absence of a formal treaty between two nations, it is still possible for a justice official in one country to send a letter rogatory or request for assistance to a justice official in another country. In most instances, such a request for assistance will be directed to a government authority in the receiving country, although the more rare example of a communication that is sent directly to a judge in the receiving country was noted by at least one response to the Questionnaire. A request for assistance may be dismissed if it would violate the receiving country's basic rules of procedural fairness, natural justice, and/or human rights.

Remote Testimony

One aspect of mutual cooperation is where a witness in a criminal proceeding in country A attends at a courthouse in country B, before a judge in country B, in order to testify.

The general consensus was that, where a witness does testify remotely, it is preferable to have that witness testify from a courtroom setting rather than, for example, a private home or even a police station, where the witness is in custody.

One potential dilemma that may arise where a witness testifies remotely from a foreign country is where the protections normally afforded to that witness in the nation where the criminal proceeding is being held, such as the right to independent legal representation, are not available to that witness in the foreign place.

Another potential dilemma is where the witness who is testifying remotely from a foreign country commits perjury; it was suggested by one delegation that it might be better to have the witness testify from an official Embassy, for jurisdictional purposes.

It was agreed by all participants, however, that despite these potential dilemmas, there are distinct advantages to allowing remote testimony in criminal cases, particularly for vulnerable witnesses. Ultimately, all agreed that it is a matter of discretion – the judge hearing the case will decide whether to permit remote testimony, whether the matter is being heard by a judge sitting alone or with a jury.

Extradition

It was generally agreed by all participants that the laws of the country deciding whether to extradite someone to face criminal proceedings in another country are relevant to the determination. For example, the extradition application may be dismissed if the police in the foreign place gathered evidence in a way that is impermissible in the country hearing the application. As another example, the extradition application may be dismissed if the foreign

place wants to try the accused on an offence unknown to the law of the country hearing the application. As yet another example, the extradition application may be dismissed if the accused cannot receive a fair trial in the foreign place.

Recent Statement of the European Association of Judges

We discussed in the group the EAJ's newly adopted statement on the purported prosecution of Lithuanian judges by Russian authorities. The background of that Statement is beyond the scope of this brief report, however, the Statement is an example of international cooperation, or non-cooperation, in matters of criminal law, in that it encourages Interpol and other law enforcement authorities to reject any Russian requests for assistance in any investigation and enforcement measures in the cases in question.

The Topic for Next Year

In 2024, the Third Study Commission intends to study the topic of *drugs, including importing, exporting, trafficking, decriminalization and/or legalization, legislation, the investigation and prosecution of drug offences, and alternative sentencing regimes such as drug courts*. Our group discussion will include a presentation from the UNODC – the United Nations Office on Drugs and Crime.

The Board of the Third Study Commission

The Presidents of the Third Study Commission are Lene Sigvardt of Denmark and Clayton Conlan of Canada. The newly elected Vice-President is Chrissa Loukas-Karlsson of Australia.