

### 3<sup>rd</sup> Study Commission Questionnaire

#### Mutual cooperation in the investigation of criminal cases and in the presentation of evidence

#### Answers from Slovenija

##### **Ad 1:**

In Slovenia, mutual cooperation in the investigation of criminal cases and in the presentation of evidence in criminal proceedings in court is regulated by two laws:

- the Act on Cooperation in Criminal Matters with the Member States of the European Union (ZSKZDEČU-1) regulates the procedure of international mutual legal assistance, which refers to EU countries,
- the Criminal Procedure Act (ZKP) regulates the procedure of international mutual legal assistance, which refers to the so-called third countries, i.e. countries outside the EU. In both cases, it is the procedural law that binds the Republic of Slovenia as the requested country.

In the case of EU countries, the substantive legal basis is the EU regulations and directives, and the main legal basis in most cases is the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and Directive 2014/41/EU on the European Investigation Order in Criminal Matters. In the case of third countries, there are various bilateral treaties between the Republic of Slovenia and individual countries and various international treaties, especially UN Conventions:

- the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959,
- The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985,
- Agreement between the Government of the Republic of Slovenia and the Government of the United States of America on the instrument as referred to in third paragraph of Article 3 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America, signed at Washington on 25 June 2003,
- Convention on Cybercrime dated November 23th 2001,
- the principle of reciprocity in the provision of mutual legal assistance in criminal matters,
- the UN Convention against International Organized Crime, signed on 12/12/2000 in Palermo,
- the UN Convention against International Organized Crime of 11/15/2000.

##### **Ad 2:**

One of the stages of criminal proceedings in the Republic of Slovenia is the judicial enquiry, which is conducted by the investigating judge, who decides what evidence is presented in the judicial enquiry. One of the principles of criminal proceedings in the Republic of Slovenia is the principle of substantive truthfulness from Article 17 of the ZKP, which states that the courts and state authorities involved in criminal proceedings must truthfully and completely ascertain the facts that are important for issuing a judicial decision.

Based on the above, judges play a very important role in obtaining and implementing evidence, including from abroad. In addition, the courts are mostly responsible for the implementation of mutual legal assistance, in the context of which they also obtain evidence and forward it to judicial authorities from abroad that have requested to obtain such evidence. The principles of mutual recognition, effective mutual legal assistance and trust in EU law are relevant here. In practise, this means that in the case of a request or an EIO, the court in the Republic of Slovenia does not assess the content of the actions of the competent judicial authority from abroad, but relies on their

content.

### **Ad 3:**

In the case of a request or EIO from EU countries the legal basis is ZSKZDČEU-1, in the case of the so-called third countries the legal basis is ZKP.

### **Ad 4:**

The main legal basis is Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters.

In practise, however, the collection of evidence proceeds in such a way that when a Slovenian judge asks a foreign state for mutual legal assistance, in addition to the legal basis (international treaties, conventions,...), he or she must first specify exactly what the offence is (legal qualification), provide concrete legal evidence of the alleged offence (enforcement conduct) and name the legal provision from the Criminal Code. In addition, the prescribed sanction and the date of the statute of limitations are also relevant information. The judge must then explain in detail the reason for the request to a foreign judicial authority (e.g. the residence of the witness abroad) and provide all available information to facilitate the work of the requested authority abroad. A uniform form in the form of a European Investigation Order (EIO) is envisaged for cooperation between EU countries.

When the Slovenian court receives a request or an EIO from abroad, first checks whether all the conditions of the Directive are met (the proposed procedural measure is necessary, proportionate and admissible in similar national cases). In most cases, the requested investigative measure will be carried out unless there are grounds for refusing the proposed investigative measure, which are explicitly stated:

1. Immunity or privilege or rules limiting criminal liability in relation to freedom of the press;
2. harm to essential national security interests;
3. non-criminal proceedings;
4. principle of ne bis in idem;
5. extraterritoriality in relation to double criminality;
6. incompatibility with fundamental rights obligations.

For some measures, there are additional grounds for refusal:

1. non-existence of double criminality – the crime is established in both countries (except for the list of serious crimes);
2. measure cannot be executed (investigative measure does not exist or is not available in similar national cases and there is no alternative measure).

### **Ad 5:**

With regard to obtaining evidence on the basis of a request from abroad, within the framework of the principle of mutual recognition (Article 3 of the ZSKZDČEU-1) it is stipulated that the competent authorities in the Republic of Slovenia enforce the decisions of the competent authorities of other member states on the basis of mutual recognition. When making decisions, taking into account human rights and fundamental freedoms, they only assess whether the relevant documents are submitted and other conditions stipulated by the law are met. Therefore, when the judge assesses whether he will grant the request from abroad, it is important to also take into account fundamental human rights and freedoms and the stated principles of natural and procedural justice.

As far as obtaining evidence from abroad is concerned, it is also very important for a Slovenian judge to ensure that evidence obtained abroad is obtained in a legal manner and with respect for human rights and fundamental freedoms, otherwise there is a possibility that evidence obtained in this way could be excluded. In accordance with the provision of Article 18 of the Criminal Code, which states that the court may not base a court decision on evidence obtained in violation of constitutionally established human rights and fundamental freedoms, as well as on evidence obtained in violation of the provisions of criminal procedure and for which it is stipulated in this law that a court decision may not be based on it, or obtained on the basis of such inadmissible evidence.

#### **Ad 6:**

Experienced judges consider international cooperation in criminal matters to be very good and timely, in an efficient manner, and I have not had many bad experiences. Good cooperation is greatly facilitated by the help of Eurojust and the contact points at the courts within the European Judicial Network, which help coordinate procedural actions (e.g. agreeing on the date for the video conference). Very important for good cooperation is also the European Judicial Atlas (online application), through which one can easily find out which is the competent judicial authority abroad, including all contact information. I also have good experience with accepting letters rogatory in English in the case of countries where English is not an official language (e.g. Latvia, Lithuania, Estonia, Sweden, Finland).

There is some scope for improving cooperation in order to make international cooperation even more effective in cases where foreign judicial authorities are requested to question witnesses or defendants from abroad, while the Slovenian courts have no information about the address where the witness or defendant resides abroad. In such cases, the foreign judicial authority is also requested to determine the address of the witness or accused according to the internal legislation of the requested country, and the witness or accused is then invited to the address thus determined. In this process, different countries and also different judicial authorities of the same country proceed with different intensity. Some requested authorities give up quickly and inform the Slovenian court that the witness or the accused could not be found. Other judicial authorities, however, make great efforts to find the wanted witness or the accused (enquiries, subpoenas, enquiries with family members,...).

Ljubljana, 24. 5. 2023