



Project: Development of Reliable and Functioning Policing Systems and Enhancing of Combating Main Criminal Activities and Police Co-operation

Strasbourg, November 2005

Report on the
Workshop on Assessment of Training Needs
in the Field of International Co-operation in Criminal
Matters

Tirana, Albania (23 September 2005)

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For any additional information please contact:

Council of Europe
Directorate General I – Legal Affairs
67075 Strasbourg CEDEX, France
Tel +33-3-9021-4260
Fax +33-3-8841-2052
E-mail livia.stoica@coe.int

The views expressed in this report do not necessarily reflect official opinions of the European Commission or of the Council of Europe.

1 INTRODUCTION

This workshop was organised by the Council of Europe within the framework of its joint project with the European Commission on "*Development of Reliable and Functioning Policing Systems and Enhancing of Combating Main Criminal Activities and Police Co-operation*" (CARPO) under Output 1.5¹.

This activity aimed at reviewing concrete training needs, existing training manuals, curriculum and other relevant materials for general training on international co-operation in criminal matters aspects. It took place in Tirana, at the Council of Europe's office, on 23 September 2005.

Local representatives participating in the workshop were from the Ministry of Justice, Division for International Judicial Cooperation and Directorate of European Integration (2), the General Prosecution Office (1), Department of Foreign Relations (1), the Prosecution Office for Serious Crimes (1), the Albanian Magistrates' School (1) and the Police Academy(1).² The Council of Europe made two experts available, Andrej Kmecl (Slovenia) and Gert Vermeulen (Belgium), who prepared the major part of this report, and was represented by Ms Eridana Cano (PACO Impact Local Project Officer).

The present report endeavours to highlight the main conclusions identified in the course of the workshop to address training needs and issues of concern and outlines the future activities in this field which will be organised within the framework of the CARPO project until September 2006.

2 ADDRESSING TRAINING NEEDS IN THE FIELD OF INTERNATIONAL CO - OPERATION IN CRIMINAL MATTERS

The following findings, conclusions and recommendations are based on information provided by the participants during the workshop.

2.1 State of play

2.1.1 TRAINING

Formal judicial training is provided exclusively by the Magistrates' School. The School was established by law and offers two kinds of training: initial training for newly appointed judges and prosecutors and continuous training for judicial civil servants in office. Initial training lasts for 3 years and is oriented primarily towards practical application of procedural laws. Mutual legal assistance and related topics are covered. Continuous training is based on biannual programmes, which are formed on the basis of questionnaires, circulated among the target audience. The interest expressed for training in mutual legal assistance and related matters was high and therefore two seminars offering basic training on the matter are organised every year. In these seminars, the topics are covered not only theoretically, but also by practical examples presented by the professionals from the Ministry of Justice and other agencies for whom dealing with these matters presents daily practice. Written training materials are prepared by the lecturers. No specialised continuous training

¹ The specific objective of Output 1.5 is to strengthen capacities for co-operation in criminal matters among countries of South-eastern Europe, in particular by supporting Member States' efforts to ratify and implement the 2nd additional protocol to the European Convention on mutual assistance in criminal matters (CETS 182) through a) the development of strategies for its ratification and implementation and b) the development and testing of training materials in the field of co-operation in criminal matters. For further information, see: <http://www.coe.int/cards-police>

² Ened Nakuci (Prosecutor, Prosecution Office for Serious Crimes), Manuela Murataj (Specialist, Department of Foreign Relations, General Prosecution Office), Rovena Demiraj (Expert, Directorate of European Integration, Ministry of Justice), Diana Stillo (Expert, International Judicial Co-operation Division, Ministry of Justice), Hasan Shkembi (Scientific researcher, Police Academy), Arta Mandro (Pedagogue, School of Magistrates).

seminar on mutual legal assistance and related issues has been organised yet. Also, there is no training in foreign languages.

The Police Academy's curricula does not cover the topic of international co-operation in criminal matters, which was assessed by its representative during the workshop as constituting a serious problem. The latter pointed out that the entire curriculum of the Academy is due to revision, including insertion of modules related to international police co-operation, mutual legal assistance or other aspects of international public law with relevance for police functioning in international context.

At academic/university level there is no specific expertise whatsoever, nor teaching on the matter or production of scientific literature on the matter.

2.1.2 REFERENCE MATERIALS AND GUIDELINES

Written materials which could serve as reference materials are practically non-existent. The international agreements are all translated and published, but the translations are of questionable quality. A compilation of such legal instruments does not exist.

There is limited legal doctrine available on the topic, published in a journal "Judicial Life" issued by the Magistrates' School.

The Prosecutor's Office has some written instructions, which are of internal nature and not available to any other users. Also, the Ministry of Justice keeps record of questions and answers related to mutual legal assistance and other forms of judicial cooperation in criminal matters, which, with the necessary effort, could be collected into a set of "frequently asked questions" (FAQ) and thus serve as an elementary form of manual on the matter. Finally, the Ministry of Justice and the Prosecution Office for Serious Crimes have some informal templates for mutual legal assistance and other judicial cooperation requests at its disposal.

The need is also felt for good legal dictionaries.

As far as foreign literature is concerned, its availability is limited and the language barrier seems to be relatively high. The Co-operation Manual developed within the Council of Europe PACO programme includes a chapter on judicial co-operation, however given the fact that it is in English only, its use is limited.

2.1.3 CURRENT ACTIVITIES

Besides the seminars available through the Magistrates' School, it was mentioned that the Ministry of Justice organises a series of shorter seminars, workshops and meetings, which are open to all the potential target audiences, including the judiciary and the police. Also, some training of judges has been realised through seminars organised by TAIEX or in the framework of the CARDS programme. It was not clear whether joint trainings for magistrates and police officials have been organised in 2005 or were planned for 2006.

As regards publications, there is solely one legal journal published at the School of Magistrates, which included several short articles having a certain relevance for the domain.

2.1.4 ASSESSMENT

The representatives of the Ministry of Justice considered the level of knowledge of mutual assistance and other forms of judicial co-operation in criminal matters among prosecutors and judges sufficient.

Per Prosecutor's office district, it is said, there are one or two prosecutors with sufficiently specialised knowledge on the subject, supervised by the Foreign Relations Department of the General Prosecution Office. Among judges, knowledge on the subject is generally seen as more basic, which, given the fact that they are only occasionally confronted with international criminal cases, is still deemed sufficient. It was also pointed out that the co-operation with judges or prosecutors who have enjoyed formal training at the Magistrates' School, is much easier than with those who have not.

Still according to the Ministry of Justice representatives, most problems do not stem from lack of training (opportunities) or insufficient subject knowledge, but rather from unsuitable domestic legislation,³ from the non-observance of treaty provisions,⁴ from grounds for refusal unduly being invoked⁵ or from conflicts between treaty provisions and domestic legislation⁶ or are due to a lack of trained translators. The primary knowledge gap, according to Ministry of Justice representatives, is with regard to cross-border (hot) pursuit only.

The staff of the Police Academy and other resources within the Ministry of Interior are limited. The representative of the Police Academy welcomed assistance in preparing curriculum reform and trainers' training in this field.

In general, there seems to be no pro-active monitoring of ongoing Council of Europe or European Union's legal developments in the area of mutual assistance or other forms of international co-operation in criminal matters, which obviously hinders the establishment of long-term training strategies. Neither is there any access whatsoever to information available within the European Judicial Network (EJN) or to the European Judicial Atlas, which, in case direct communication in mutual legal assistance is envisaged, is problematic.

As regards reference materials, it was mentioned that with appropriate expert support from the Ministry of Justice, the School could be capable of publishing a manual on judicial co-operation in criminal matters.

2.2 Conclusions and recommendations

In conclusion, there are a number of clearly identified needs in Albania in the area of international co-operation in criminal matters.

Several representatives from the Prosecutor General's Office and from the Ministry of Justice referred during discussions to the necessity to amend domestic legislation in order to ensure that it fully complies with European standards in the field of international co-operation in criminal matters. Hence, a small-scale workshop involving relevant national experts could be organised in order to address this issue.

³ Examples given, however, are not entirely convincing. It is considered a problem e.g. that the current legislation does not allow for the execution of a European arrest warrant (EAW) (as it was experienced in an Italo-Albanian case). Consequently, its amendment is deemed necessary in order for it to allow for the execution of EAW's, whereas, obviously, it makes no sense to allow for the execution of EAW's without having EU member state status.

⁴ Such as the maximum term of 40 days provisional arrest under the 1957 European Convention on Extradition.

⁵ Such as the political offence exception, as invoked e.g. by Belgium following an Albanian extradition request.

⁶ Again, the example given is not very convincing. It is argued that, in certain cases, the service of foreign procedural documents in Albania under the 1959 European Convention on mutual assistance in criminal matters proves to be impossible, due to lack of dual criminality (non-criminalization under Albanian domestic legislation), whereas, according to participants' statements, Albania has not reserved the right to make the service of such documents under the 1959 Convention subject to the dual criminality condition.

It seems also that there is a general problem with the lack of reference materials and guidelines covering practical aspects of mutual assistance in criminal matters and guidance on the application of existing legal provisions. In this respect, possible ways to address this gap include:

- the development of a reference manual on mutual assistance and other forms of judicial co-operation in criminal matters, primarily comprising adequate and reliable translations of the texts of international legal instruments in force, an explanatory commentary (provisionally consisting e.g. of a compilation of FAQs on the matter with the Ministry of Justice's responses to them) and the Ministry of Justice's templates for mutual legal assistance and other related requests (completed with e.g. EJN and other 'good practice' templates);
- In addition, the knowledge of the legal, judicial and institutional systems of other European states should be promoted. As mentioned earlier, the Co-operation Manual developed within the PACO programme contains useful information on judicial co-operation aspects in Albania, Bulgaria, Bosnia and Herzegovina, Croatia, Hungary, Moldova, Romania, Serbia and Montenegro, Slovenia and "the former Yugoslav Republic of Macedonia".
 - The specific chapter of Albania of the Co-operation manual should be updated, with the assistance of experts from the Albanian authorities, in order to serve as a useful tool of information for foreign authorities.
 - At the same time, national authorities would also benefit from it, as it contains information on the law and procedures of other countries relating to international co-operation in criminal matters. Following the general update of the Manual (to be carried out before February 2006), through the CARPO project, additional copies of the updated version of the manual could be distributed to relevant institutions and practitioners. Also, the possibility of translation and consequently much wider distribution of the Co-operation Manual in Albania could be considered, in consultation with relevant authorities.

As regards training, there are knowledgeable experts available, the necessary training infrastructure appears to be in place, and some basic activities have been carried out or are under way. However, it could be considered to organise an advanced training session (with limited attention for legal theory and strong focus on interactive workshops/participants discussions/case-studies) for a limited number of selected professionals who deal with these issues on a regular basis. This training could be developed by a group of experts involving Council of Europe trainers and experts from the appropriate department of the Ministry of Justice and the Police in the framework of the CARPO project. Such specialisation presents advantages in terms of efficiency and restricting training to a select circle of officials. It would also potentially pave the way for a future 'train the trainers' approach and the development of a pool of specialised national experts in international co-operation in criminal matters. Also, joint trainings for magistrates and police officials should be promoted.

Further, albeit most likely beyond the scope of possible Council of Europe assistance, it is suggested:

- the development/purchase of reliable and high-quality legal dictionaries;
- to promote mutual legal assistance-related legal doctrine;
- to consider the establishment of cooperation agreements between Albanian academia and universities with academic experts/universities abroad (EU), including provision of staff and student mobility (grants);
- the gradual establishment of direct and pro-active information channels with Eurojust, EJN, Europol.

Direct communication between relevant authorities often involves adequate fluency in at least one foreign language in addition to the mother tongue, otherwise this possibility remains theoretical. In addition, inability to express oneself in another foreign language can constitute a major obstacle to speedy mutual assistance. Albanian authorities should consider promoting and extending in the course of careers of relevant professionals trainings in foreign languages. Enhanced training of

official translators/interpreters should also be promoted as well as basic language training for judicial and police practitioners (limited to basic jargon only).

In addition, assistance in developing the curriculum of the Police Academy is definitely required. However, the question of this curriculum seems to be much wider than the scope of this report as the whole curriculum was described as outdated and unsuitable and the available resources were considered as insufficient to address this issue. Nevertheless, also within the frame of this project, experts suggest to offer the Police Academy as much assistance as only possible in this regard.

3 FUTURE ACTIVITIES IN THE FIELD OF INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

ACTIVITY 1.5.1 DEVELOP STRATEGIES FOR THE RATIFICATION AND ACTUAL IMPLEMENTATION OF THE 2ND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (ETS 182)

		Proposed Dates
1.5.1.4	Legislative expert support for the review of the legislation on international co-operation in criminal matters	December 2005 – February 2006

ACTIVITY 1.5.2 DEVELOP, TEST AND MAKE AVAILABLE TRAINING MATERIALS FOR FURTHER TRAINING

		Dates
1.5.2.2	Co-operation Manual: Update of the Albanian chapter	November 2005 – February 2006
1.5.2.3	Development of training materials by national and international experts	January - March 2006
1.5.2.4	1 in-country training event with local and international trainers	April – June 2006
1.5.2.5	Finalisation of training materials in Albanian and distribution to relevant institutions	July - August 2006

4 APPENDIX - COMPLETED SELF- ASSESSMENT OF TRAINING CURRICULA, MATERIALS AND TRAINING NEEDS IN THE AREA OF INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS

	Availability (yes/no)		Specify (if previous answer is yes)	Priority			Comments
	yes	no		No	Low	Medium	
Curricula for law schools	yes						
Curricula for training vocational and professional institutions	yes		Both initial & continuous training		x		
Domestic/internal manual for relevant law enforcement, prosecutorial and judicial authorities (with information on requirements, details of procedures for execution of requests)		No					
Model checklists for preparing mutual legal assistance requests		No					Existing standard list
Model checklists for preparing specific types of requests: a) search and seizure b) production of documents c) taking witness statement and evidence d) temporary transfer of sentenced persons for evidence e) pre-judgment seizure/freezing or post-judgment confiscation f) special investigative techniques	Yes a) b) c) d)	No e)					Ministry of Justice only
Academic publications	Yes						Magistrate's school
Guide for foreign authorities		No					