

## The Topic of the Issue - REGIONAL COOPERATION

REGIONAL COOPERATION BETWEEN WAR CRIMES PROSECUTOR'S OFFICES

### Natural interdependence

Bogdan Stanković *Deputy War Crimes Prosecutor*



**War crimes prosecutor's offices of Serbia, Croatia and Bosnia and Herzegovina were naturally directed towards mutual cooperation. However, the lack of courage and political will at the time immediately following the end of conflicts, while memories of atrocious crimes were still very fresh, delayed the beginning of necessary cooperation.**

The investigation of war crimes, as well as the detection of the perpetrators and circumstances of the crimes are a most demanding task. The complexity of this job arises from the factual distance between the time of the crimes commission and the present time, the latter being marked by our attempts to find crimes-related evidence. Another fact to be kept in mind is that a prevailing majority of such offences are large-scale crimes involving large numbers of victims and numerous perpetrators. The crimes often got concealed, the documentation destroyed or falsified, while the material evidence was almost invariably dislocated.

Following the disintegration of Yugoslavia, most scenes of the crimes remained in the territories of the former Yugoslav republics and in Kosovo, where the state authorities of Serbia and Montenegro do not have jurisdiction. In the above described circumstances, the prosecutor's offices of Serbia, Croatia and Bosnia and Herzegovina were naturally directed towards mutual cooperation. However, the lack of courage and political will at the time immediately following the end of the conflicts, while atrocious crimes were still fresh in memory, constantly delayed the beginning of indispensable cooperation among these state institutions.

By its legal nature, the cooperation, i.e. mutual assistance rendered by the judicial bodies of different states falls within the area of international legal assistance.

### International legal assistance

Further to the provisions of the Act on Criminal Procedure currently in force in Serbia and Montenegro, international legal assistance shall be rendered on the basis of multilateral and bilateral agreements, as well as on the basis of the provisions contained in the Act of Criminal Procedure in cases when the aforementioned agreements do not exist or do not regulate the issue in case.

The relations between the Republic of Croatia and the State Union of Serbia and Montenegro are regulated by the European Convention on Mutual Assistance in Criminal Matters, as well as by the Bilateral Agreement on Legal Assistance in Civil and Criminal Matters concluded between the Federal Republic of Yugoslavia and the Republic of Croatia. A similar situation applies to the relations between Serbia and Bosnia and Herzegovina, the latter state having also ratified the European Convention on Mutual Legal Assistance some time ago. The Agreement on Legal Assistance in Civil and Criminal Matters between Serbia and Montenegro and Bosnia and Herzegovina was signed by the two states and, as far as Serbia and Montenegro is concerned, its ratification is currently being reviewed by the National Assembly.

Both the agreement with Croatia and that with Bosnia and Herzegovina contain provisions on referring criminal prosecution, which also apply to the procedures against perpetrators of war crimes. A large number of issues related to international legal assistance, e.g. the performance of certain proceeding actions including the interrogations of suspects, witnesses or court experts, are no longer disputable in practice and have become a fairly common practice. Another point to be observed through the newly established practice is that judicial bodies of the requesting state are allowed access to the actions of legal assistance carried out by the other state's competent bodies. Furthermore, this international legal assistance is one of the bases for the interstate referrals of war crimes cases, since it is evident that without access to relevant evidence existing in the territories of different states, purely formal referrals in themselves are not likely to render impressive results.

In view of the fact that this area would be primarily regulated by the aforementioned agreements, their efficient implementation by the authorities of our states will be crucial for successful referrals of war

crimes cases.

### **Changed attitudes**

Increasingly evident are changed attitudes demonstrated by each of the states' highest authorities, who have lately made considerable efforts towards the creation of a favourable environment for the efficient operating of international legal assistance. Another fact to be pointed out is the understanding of the issue on the part of the OSCE representatives, who have also engaged in organizing a number of meetings attended by judicial professionals of the states in the region.

It is evident that the competent bodies of the states in the region, including their respective prosecutor's offices, have lately made a significant step forward in demonstrating the necessity of regional cooperation in war crimes investigations. In support of this is also the fact that there has been little resistance to such forms of cooperation, since the issue of war crimes trials is of common concern for all of the states in the region.

While submitting a request for international legal assistance, each of the states is bound to follow the prescribed procedure, which is reflected in the written form of the request. The written request is submitted to the competent ministry of the state requested to render assistance, while Art. 15 (2) of the European Convention on Assistance in Criminal Matters already stipulates that, in cases of emergency, such a request can be forwarded directly to the judicial authorities.

### **Access to witnesses**

When discussing the issue of witness accessibility, the tool of international legal assistance is of enormous importance, since our experience so far has clearly shown that, in the pre-trial and investigation stages, witnesses reluctantly respond to summons of another state's judicial bodies.

So far, the international legal assistance among the former Yugoslav republics has been conducted according to the thus defined procedure of rendering international legal assistance. Thereby, in the course of the proceedings related to the crimes committed at Ovčara, as the public have already been informed, several witnesses gave their statements before judicial authorities in Croatia, while the event was attended by the Belgrade War Crimes Chamber investigating judge. At a later stage of the proceedings, the same witnesses reappeared in the same capacity at the trial.

A significant progress has been made lately, when the judicial authorities of the requesting state were allowed access to the actions of legal assistance carried out in the territory of another state. Further to the Agreement on Legal Assistance in Civil and Criminal Matters concluded between the Federal Republic of Yugoslavia and the Republic of Croatia, such permission is granted by the states' respective ministries of justice, which is regulated by Art. 25 of the Convention. Prosecutors and investigating judges are particularly aware of the immense importance of this provision, since it allows access to witness examinations for those who are later going to proceed the case. The advantage of this practice lies in the fact that regardless of the questions that may be asked, there is always a chance of reacting to any new facts disclosed by the witness, which are estimated as relevant for the further course of the proceedings. Acting upon a request for legal assistance, the investigating judge who is not thoroughly familiar with all of the facts related to the case will not be able to react in the most proper way, however committed he may be.

### **The scene of the crime**

As far as access to the scene of the crime is concerned, there are a number of anticipated proceeding actions that can be relevant for the further course of the proceedings. Here I primarily refer to the access to the inspection procedure, search of premises or seizure of objects. Such actions are beyond dispute, given the fact that, beside being envisaged by individual bilateral agreements, they are also specified within Art. 531 of the Act on Criminal Procedure, which stipulates particular proceeding actions falling within the scope of international criminal legal assistance.

Access to the scene of the crime seems to have greater importance than the so-far practice has shown. Namely, over the past ten years a considerable number of crime scenes have been detected and inspected by the authorities of the International Criminal Tribunal for the Former Yugoslavia (ICTY). It is well known that mixed expert teams, especially those consisting of pathologists, antropologists and experts of forensic medicine, have already completed a bigger part of the job related to the establishment and analyses of all relevant evidence available in the scenes of the crimes. Upon receiving these expert teams' reports from the ICTY Prosecutor's Office, the states in the region utilise them in their investigations. In most cases, the ICTY expert findings were obtained by means of the most advanced methods currently available in the world, and contain all elements that we may find useful in handling a war crimes case. Repeated collection or control of the already established evidence related to

the scene of the crime would not serve any purpose and would result in unnecessary delays in the criminal procedure.

### **Memoranda**

Apart from the aforementioned facts, the very nature of war crimes investigations called for the establishment of additional and even more efficient mechanisms of cooperation among the prosecutor's offices of the states in our region, which would not require a complex procedure usually involving a number of state bodies. In early February 2005, the Republic of Serbia's Public and War Crimes Prosecutors on one side, and the Republic of Croatia's Chief State Prosecutor on the other, signed the Memorandum on Agreement and Promotion of Cooperation in Fighting All Forms of Serious Crimes. On 1 July 2005, a similar memorandum was concluded between the prosecutor's offices of Serbia and Bosnia and Herzegovina.

The primary goal of this agreement is to further regulate contacts between professional bodies and thereby upgrade the forms of cooperation throughout the pre-trial procedure. Beside other aspects, the cooperation involves the exchange of information allowing for, or contributing to, the investigation or prevention of criminal activities.

The this-far experience concerning the Memoranda application has proved that the signing of such documents was fully justified. The War Crimes Prosecutor's Office in Belgrade assisted the Split County Prosecutor in obtaining access to the witnesses related to the case conducted in Split against the perpetrators of war crimes committed in the Lora prison facility. The assistance involved technical and other prerequisites necessary for their successful handling of the case. The cooperation between the two prosecutor's offices, as well as that between other relevant state bodies, resulted in the Lora victims' appearance before the Split Court, where they testified at the trial two weeks ago. The event provoked most favourable reactions on the part of the Croatian public, who, similarly as ours, had not been sufficiently informed about the Lora crimes. Likewise, The War Crimes Prosecutor's Office requested assistance from the Croatian State Prosecutor, or another competent prosecutor's office assigned by him, relating to the events in Vukovar and Slavonia.

### **Ascending line**

The Serbian War Crimes Prosecutor now receives requests for assistance from his Croatian and BH counterparts almost on a daily basis. The levels of the existing cooperation and communication indicate that mutual assistance in the procedures among Serbian, Croatian and BH relevant bodies will continue to follow an ascending line and thereby fully serve their anticipated purpose.

Another issue related to the war crimes investigations that appears mandatory in the regional interstate cooperation refers to better cooperation among the states' police authorities in charge of the war crimes investigations, as well as the cooperation among relevant agencies entitled to support and protect witnesses and victims of the war crimes. Such forms of cooperation still remain to be verified by relevant memoranda or other similar agreements.