The SHERLOC Newsletter is pleased to share with you our recent efforts to facilitate the dissemination of information regarding the implementation of the UN Convention against Transnational Organized Crime and its three Protocols.

EXPERT MEETING ON CENTRAL AUTHORITIES

To implement resolution 8/1 of the Conference of the Parties (COP) to the United Nations Convention against Transnational Organized Crime (UNTOC), UNODC’s Global Programme for Strengthening Capacities to Prevent and Combat Organized and Serious Crime (GPTOC) held a two-day informal meeting of experts on enhancing the effectiveness of central authorities to engage in international cooperation in criminal matters, especially mutual legal assistance (MLA). The meeting took place in Vienna from 5 to 6 October 2017 and brought together twenty one experts working for central or competent authorities from different regions of the world.
The provisions on international cooperation in criminal matters are at the heart of the UNTOC Convention because they provide States with a mechanism to cooperate on a broad range of serious crimes. Despite the importance given to this issue, undertaking international cooperation is challenging for many jurisdictions. Just as States need to be equipped and have effective national drug control authorities and criminal intelligence capacities, they also need capable and adequately equipped central or other competent authorities responsible for receiving, executing, and transmitting requests for MLA, extradition and confiscation of assets. Central authorities should serve as national focal points of expertise on international cooperation in criminal matters and play an active role in overcoming encountered obstacles.

Against this background, the participants of the meeting engaged in dialogue and exchanged views, expertise and experience on practical aspects of international cooperation. The agenda comprised 11 items/sessions ranging from, for example, the establishment of central authorities and their functions to inter-agency cooperation, case management, resources, and specific challenges to MLA practice, such as digital/electronic evidence. The meeting was also an excellent opportunity to promote SHERLOC together with other UNODC technical assistance tools. GPTOC provided participants, inter alia, with a brochure describing the SHERLOC portal and basic tips for investigators and prosecutors for requesting electronic/digital data/evidence from foreign jurisdictions. In addition, experts discussed the MLA request tool and were encouraged to view the demonstration of the tool that would be given the following week, during the eighth session of the COP to the UNTOC Convention Working Group on International Cooperation.

**BASIC TIPS FOR INVESTIGATORS AND PROSECUTORS FOR REQUESTING ELECTRONIC EVIDENCE/ DIGITAL DATA/ EVIDENCE FROM FOREIGN JURISDICTIONS**

**A SELECTION OF**

- Take steps to preserve electronic evidence prior to sending the request for its disclosure (imminent risk of permanent deletion!)

- Send the request for data preservation via your country’s official contact of a 24/7 Network established under the Council of Europe Convention on Cybercrime if your and the requested country are members. If this is not the case, send a request to a relevant investigative/prosecutorial body of the requested country.

- Consult with contact points of judicial cooperation networks of the requested country or foreign liaison officers in your country regarding the entity to which the request should be sent, the procedure/channels, and the content of the request.

- Some internet service providers (ISPs) accept data preservation requests directly from foreign authorities. Verify directly with the ISP and with the above contacts whether it is possible, and if so, send the request directly to the ISP (+ a copy to the above body of the requested country, but consult with the latter before sending a request directly to an unknown ISP).
In terms of follow-up action, the participants expressed their support regarding the organization of further practical-oriented and focused expert group meetings possibly in conjunction with other meetings or conferences in Vienna or at a different venue. In terms of substance, the experts were interested in including on the agenda for the next informal meeting issues related to extradition. Using the meeting for informal consultations was discussed with some participants reporting that they had found it very useful to informally consult with counterparts on the margins of the meeting. Due to this very positive feedback and the experts’ consideration of this feature as an added benefit, it is anticipated that they will engage in even more informal consultations during future meetings.

UNODC/GPTOC will create an email list of all participants and for central authorities that wish to be kept informed of different activities and initiatives on international cooperation in criminal matters.

For further information or subscription to the list, please contact Mrs. Karen Kramer, Senior Expert (karen.kramer@unodc.org).

**International Cooperation and Technical Assistance**

This year, the Working Group on International Cooperation and the Working Group of Government Experts on Technical Assistance met jointly during the week of 9th -13th October. The meeting resulted in being an opportunity and a venue for practitioners to discuss issues related to both international cooperation and technical assistance in an inter-related way.

The agenda included an update by the Secretariat on information gathering. The discussions related to this agenda item mainly focused on SHERLOC which was recognised as a comprehensive source for legislation and case law pertaining to fourteen different crime-types, as well as cross cutting issues such as the transfer of criminal proceedings, mutual legal assistance, extradition and informal cooperation.

Experts welcomed the opportunity in having joint fora for discussion, and invited the Secretariat to create further such opportunities to discuss technical assistance in conjunction with other issues related to UNTOC. A suggestion was to have thematic technical assistance meetings, e.g. merging the Working Group of Government Experts on Technical Assistance meet together with the Working Group on Firearms. This would allow experts in that specific area to provide inputs and foster discussions about good practices to tailor technical assistance efforts to the specific crime type.
The Italian case 44121/16 RG Cass. is of particular interest with regard to extradition requests, as it illustrates how the violation of the principle of specialty in extradition proceedings can prevent the commencement of prosecution proceedings.

The defendant was accused of multiple murders and multiple murder attempts in the context of a Camorra gangs’ war. The murders took place in 1995 following the death of the head of the Licciardi gang, a mafia-style organization active in Secondigliano a suburb of Naples. According to the sentence, one of the victims, C.C., who was a member of the same gang as the defendant was murdered because he was not following the instructions from the new gang leaders-the defendant and his aunt. P.L. was arrested in Czech Republic and extradited in 2000 in relation to the killings.

In this case, the defence council argued that he could not be convicted nor prosecuted because the extradition request related to other crimes and did not relate to the murder charges and attempted murders. Further investigation, carried out after the extradition, led to new and additional counts of indictment, which were however also not reflected in the original extradition request.

The defendant was convicted on the first instance trial and the sentence confirmed on appeal. Initially, the Court found, based on the Council Framework Decision n. 584/2002/GAI on the European arrest warrant, that a violation of the principle of specialty did not occur since a violation can only be found in case a detention order is actually executed - which was not the case.

The rule or principle of specialty is designed to ensure that the offence or offences for which the requesting State seeks the return of the suspect to answer, pursuant to the extradition request, are the only offences for which the suspect will have to answer in the requesting State.

This ensures that the requested State is aware of what it consents to when it orders the extradition of a person in its jurisdiction to the requested State and, also that the suspect is aware, both during his extradition hearing and afterwards, what the allegations against him are.
The Council Framework Decision n. 584/2002/GAI provides several exceptions to the principle of specialty. The rule, as set out by Article 27, does not apply in cases where a detention order is not issued or executed.

However, it has to be noted that at the time of the extradition request, the Framework Decision had not yet been issued and the Czech Republic had not yet acceded to the European Union – hence the Decision was not applicable to the case. As a consequence, the exceptions to the rule of specialty provided by the Framework Decision could not ground the conviction, and the only applicable legal framework was the 1957 European Convention on Extradition, which deals inter alia with the rule of specialty.

Under the 1957 European Convention on Extradition, Article 14 paragraph 1 provides for the Rule of specialty:

“A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence or detention order for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom «...»”.

The Supreme Court, on the basis there was a violation of the principle of specialty in the extradition procedure, declared the sentence against the defendant void. The Court found that the violation of the principle of specialty inhibited the prosecution of the crime and ordered the Prosecutor Office to consider a new prosecution after filing another request for extradition.

The reasoning of the Court is of particular importance and interest, because it shows that if this would have related to another crime type (i.e. not murder and attempted murder), such as participation in a criminal organization, there would have been the risk that the statute of limitations would have applied and the crime could not have been prosecuted. This was not the case here since the defendant was sentenced for the crime of murder, which in Italy is not statute-barred. The case illustrates the important role extradition proceedings may have in relation to organised crime.

CONTRIBUTE!

SHERLOC is always looking for contributors who support us in collecting and summarizing legislation, case law and bibliographic data.

If you are interested and want to know more, contact us at sherloc@unodc.org
HUMAN TRAFFICKING CASES FROM MORE THAN HALF OF THE WORLD

UNODC Human Trafficking Case Law Database reached a tremendous milestone, having obtained and made publically available human trafficking cases from over one hundred jurisdictions worldwide. Launched in October 2011 as a global public online tool to collect and disseminate information on human trafficking prosecutions and convictions from all over the world, today, just six years later, the Database includes close to 1500 human trafficking cases from 101 jurisdictions worldwide.

Since its conception, the database has been instrumental in increasing the visibility of successful prosecutions and promoting awareness of the realities of the crime of trafficking in persons worldwide. Its increasing geographical coverage has enabled judges, prosecutors, policymakers, legal practitioners, researchers and other interested parties to consult practices in different jurisdictions, to broaden the knowledge-base of human trafficking crimes and to identify best practice models, which can serve to enhance the effectiveness of domestic and international efforts in combating this crime.