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**Some causes of problems in international legal assistance procedures
and proposed solutions**

Major corruption cases, like other types of economic crime, often have multiple international dimensions. This applies not only to international bribery, but frequently also to domestic criminal offences. Criminals may sometimes commit the offence from a foreign country; they (or witnesses) may have since moved to one; or they may transfer illegal gains abroad. In a globalised economy with fewer and fewer trade restrictions, national frontiers are no longer a barrier to international economic crime. As you all know, law enforcement authorities are not properly equipped to deal with such matters. Irrespective of any other problems that may arise when complex economic circumstances are involved, their standard point of departure generally continues to be that of a traditional offence that is entirely committed in one country and can be investigated, prosecuted and tried there. It was a former head of Interpol, I believe, who used the following metaphor to describe the situation: international crime flies in an aeroplane, the police follow in a car and justice in a horse-drawn carriage. I sometimes think this is no exaggeration.

In this address I will attempt to identify some specific causes of this problem and propose some solutions. I should like to point out that these are the purely personal views of a practitioner and do not necessarily reflect the official position of the German government.

1. Procedure

International legal assistance is traditionally taken to be a foreign policy matter. Often in legal assistance as in other areas, contact between many states is made through foreign ministries and embassies. Adding these authorities to the long list of those to which the transmission of a request for legal assistance must be referred means that valuable time is lost in bringing criminal proceedings. This complicated procedure may have been understandable in other times, when foreign legal systems were unfamiliar and other countries were regarded in principle with mistrust. But in my opinion, such a state of affairs is unsatisfactory in this day and age.

Within the EU, fortunately, contacts can now generally be made directly between the prosecuting authorities and courts of the various Member States without the participation of other authorities. It means that information can be sought in other countries without complication and, in urgent cases, very quickly. I am aware that this is not possible everywhere in the world, not least because the requesting authority would have to know which authority in the requested state has competence for the measure concerned. However, introducing the so-called "ministerial procedure", bypassing foreign ministries and embassies, would do much to streamline international legal assistance procedures. In certain relatively straightforward cases or for exchanges between certain better known states, ministerial powers could as a rule be delegated to subsidiary authorities.

However, such a possibility is conditional on the conclusion of bilateral or multilateral treaties governing extradition and other forms of legal assistance. Such treaties can include the "ministerial procedure" and stipulate requirements for the provision of legal assistance. Without an international treaty, it is the decision in each individual case which determines the requirements associated with a request. As the requesting state will often not know what these will be beforehand and cannot therefore prepare for them, this will inevitably take further time and trouble.

2. Removing bureaucratic obstacles

Many states impose a number of conditions that must be fulfilled before a request for legal assistance from another state can be processed. You are all familiar with the certification by Apostille or legalisation of documents, designed to confirm that the request is authentic and has been issued by the proper authority. If a German prosecutor, for example, wants to ask the law enforcement authorities in another country which imposes such requirements for the hearing an important witness, he has to issue a legal assistance request with a translation, signed by the head of the authority and stamped with an official stamp. The translator signs an affidavit on the translation stating that he is an official sworn translator. That should be enough. I have never really understood why it should be necessary for the president of the district court to certify that the request is truly authentic, that the person who signed the request is truly the head of the prosecutor's office issuing the request and that the translator is truly an official sworn translator. By the same reasoning, doubt could be cast on the authenticity of those certificates and the identity of the district court president and so on *ad infinitum*, or at least until the offender dies of old age or the offence is time-barred. Nor can I see why in some cases I should have to wait months for the diplomatic channels of the requested state to legalise my request for assistance. I have a case of that kind on my plate at the present time, involving a South American country.

Are these complicated procedural requirements so important as to justify the delays and obstacles to the provision of legal assistance? I suppose that they are often imposed in countries which already take a bureaucratic and formalistic approach to procedures between their own national authorities. It is also possible that the purpose of complicating international legal assistance procedures is simply to emphasise national sovereignty.

3. Speeding up the processing of requests

It is desirable and indeed necessary for requests for international legal assistance to be processed as quickly as possible. In practice – including, unfortunately, in western Europe – requests often take years to process, or are never answered at all.

In order to remedy this problem, the first step is to raise awareness of the significance of international legal assistance within the law enforcement community. It must be made clear to all those involved, including the ministerial officials responsible for examining and transmitting the request, that in many cases their country also depends on foreign assistance for the effective prosecution of criminal offences. Effective cooperation with other countries is essential if they want to do more than just catch domestic petty criminals. That is why everyone should do what they can to expedite requests for assistance from foreign authorities. Unfortunately, I have often got the impression in my job that for many countries "mutual" legal assistance actually means "unilateral" legal assistance. They expect effective assistance from other countries but are reluctant to treat foreign requests in the same way.

If, in occasional cases, the rules of domestic substantive law do not allow a request to be processed, the requesting authority should at the very least be informed of the fact so that it can close the case or pursue other options, rather than waiting years in vain for an answer.

Finally also in this sector a sufficient personal equipment should be ensured. It should be noted that provision of effective legal assistance for other countries – for example concerning cases of international corruption – is also able to improve conditions in the own country.

4. Waiving assessment of evidence of guilt in extradition procedures

Many states receiving an extradition request do not consider an arrest warrant or court judgement from the requesting state to be sufficient grounds for granting extradition. Instead, their decision whether or not to extradite is based on their own assessment of evidence according to the standards of their own law of criminal procedure. In many cases, that means that boxes of witness statements or other evidence, translated and often bearing the Apostilles and certificates

I mentioned earlier, have to be sent to the requested state. All these documents are then examined in onerous procedures that frequently involve several stages of appeal and take many years. In the meantime, if extradition to the requesting state had taken place promptly, a verdict could have been reached long since, or perhaps even the sentence executed. My impression is that many countries expect a higher standard of proof in extradition cases than in their own criminal procedure. The sole purpose of extradition is the conduct of criminal proceedings or the execution of sentence in the requesting state. The requested state has no need to conduct its own criminal proceedings in such a case.

In order to avoid misunderstandings: I don't ask for unconditional extradition at this point, since certain questions are entirely legitimate. For example, is the offence concerned a criminal offence in both countries? Would the suspect be liable to torture or the death penalty after extradition? But I believe that, given the state of relations between most countries, there are no grounds for an atmosphere of mistrust in which the decisions of another country's courts are not accepted. If criminals know that they will be extradited promptly and will not be protected by lengthy extradition procedures, that knowledge may also deter them from committing crimes and fleeing the consequences.

5. Establishing personal contacts between law enforcement officials and building networks

In addition to the necessary changes to laws and regulations, personal contacts between prosecutors and judges involved in international legal assistance in different countries could help to streamline and speed up such procedures. Such contacts could be established or strengthened during professional visits or at meetings of international organisations, like this one. It would also provide an opportunity for getting to know other countries' legal systems and understanding their requirements. International networks like Iber-RED and EJM certainly represent a great step forward in consolidating relations in matters relating to legal assistance. Efforts should now be made to build networks of these networks so as to facilitate contacts in more distant countries.