

21st Session of the CCPCJ

**Thematic discussion on violence against migrants, migrant workers and their families
International judicial cooperation in smuggling of migrants and trafficking in persons cases.
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What is the theme of discussion?

- Violence against migrants, migrant workers and their families-a theme with strong criminological and victimological connections
- In assessing the dimensions of the phenomenon we need concrete, reliable statistical data
- Difficulties in collecting data about migrants-the collection of data is usually made based on the type of the offence, or the offender-difference between legal and real criminality
- A more important role for victimization surveys?
- Taking into account the scarcity of the data on the subject the presentation will concentrate upon smuggling of migrants, an offence where the passive subject of the offence (the victim) is clearly identifiable and on TIP offences where in most cases the victims are migrants-only a glimpse into the big picture of violence against migrants

Smuggling of migrants and trafficking in persons

- Various reasons that determine people to cross the borders without travel documents
- The migrants are put under a situation of vulnerability, their life, security is many times endangered, submitted to degrading treatments
- RO encounters types of migration similar with those of the UE
- In this context, illegal transit migration and illegal migratory flows can also be met
- TIP is another crime where many of the victims are migrants and which is well represented in the caseload RO confronts with
- Very important to have a normative framework ready to apply at substantial level that will facilitate the international judicial cooperation
- Art. 6 of the UN Smuggling of Migrants Protocol-Art. 71 of the EGO no.105/2001 with its subsequent modifications.
- Art. 5 in conjunction with Art. 3 of the TIP Protocol-Law 678/2001-Articles 12 and 13

International judicial cooperation

- How can we make the international judicial cooperation effective:
- **Legal instrument applicable** (UNTOC and Smuggling Protocol, Coe Convention Strasbourg 1959 and its two Additional Protocols, UE Convention 2000 and its Additional Protocol)
- **Role of central authorities** (two central authorities-MoJ and POHCCJ)
- **Channels and means of communication** (as long as allowed by the international instrument applicable, contact through central authorities using expedited means of communication)
- **Role of networks** (EUROJUST, EJM, PC-OC Contact Points, Network of the Regional Cooperation Council)
- Also important a smooth relation between police and judicial cooperation

International judicial cooperation

- Types of international judicial cooperation encountered as regards cases related to smuggling of migrants and trafficking in persons
- Extradition/EAW (simplified form of extradition applicable at EU level)
- MLA requests
- Freezing and confiscation
- JITs
- Special investigative techniques
- Videconference

International judicial cooperation

- What specificity for MLA requests?
- Formulated during prosecution stage or trial stage-different objects-different tasks for the Executing State.
- Request formulated by RO during trial stage to identify the domiciles of two defendands, nationals of country A
- Request formulated by RO during trial stage to summon defendants, nationals of country A
- Request formulated by RO during prosecution stage to country B-organized criminal group acting in 3 countries-RO transit country
- Object of the letter rogatory: locating a national of country B, summoning the national and announce him he is a suspect in a criminal investigation taking place in RO, asking him a set of questions, announcing him he was wiretapped, locating two witnesses and take them statements (migrants), providing criminal records of for 4 other defendands, nationals of country B

International judicial cooperation

- Extradition/EAW
- EAW issued or received for TIP offences-trafficcking in persons (THB)-on the list of 32 offences-no need for the double criminality check
- Extraditions-CoE Convention on Extradition is the instrument used at regional level
- Case sent by RO to country D based on UNTOC in conjunction with the TIP Protocol
- Important to reach universal adherence
- Important for the success of the request – the Solicited State to accept UNTOC as legal basis for extradition
- Positive conflicts of jurisdiction-non bis in idem-issues quite often encountered.

Conclusions

- Important to work not only at legislative level but to concentrate on actual implementation of the UNTOC and its Protocols
- *A Review Mechanism* is vital for that purpose
- Ideal to develop best-practices and establish dynamic networks between the involved experts.
- *Working together through a continuous dialogue in establishing a common modus operandi so that we could tackle the phenomenon efficiently*

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Thank you for your kind attention