MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

COUNTRY REPORT FROM VIETNAM

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INTRODUCTION:

- Main functions of the SPP of Vietnam in mutual legal assistance
- Legal/technical MLA issues encountered in practice
Vietnamese laws – General regulations

Main functions of the SPP of Vietnam in mutual legal assistance

- Principles on MLA:
  - Respect for each other’s independence, sovereignty and national territorial integrity,
  - non-intervention in each other’s internal affairs,
  - Equality and mutual benefit in compliance with the Constitution and law of Vietnam, international treaties to which Vietnam is a party.
Form of MLA in criminal matters:
- Service of documents and other records
- Summon of witnesses and experts
- Collection and provision of evidence
- Criminal prosecution
- Exchange of information, and
- Other forms of MLA.
Vietnamese laws – General regulations

- Refusal or postponement of execution:
  - Refusal:
    - If not in conformity with obligations of Vietnam under international treaties to which Vietnam is a party and Vietnamese laws;
    - If the execution of the request may jeopardize the sovereignty or national security of Vietnam;
    - The request is for prosecution of a person for a criminal conduct of which that person has been convicted, acquitted or granted a general or special reprieve in Vietnam;
Refusal or postponement of execution:

- Refusal: (continued)
  - The request relates to a criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Vietnam;
  - The request relates to a law violation which does constitute a criminal offence under the Penal Code of Vietnam.

- Postponement:
  - if the execution of that request would cause obstacle to the investigation, prosecution, trial, or the enforcement of a judgment in Vietnam.
Vietnamese laws – incoming requests

- Procedures for receiving and processing a foreign request
  - The SPP check its validity, transmit to the agency conducting criminal proceedings
  - After receiving the result from conducting agencies, the SPP send it to the competent authority of the requesting party
  - Inform the reason of late execution
Vietnamese laws – incoming requests

- Service of summons: the request shall send to the SPP at least in 90 day prior to the date on which the person must be present in the requesting state.
Vietnamese laws – incoming requests

- Temporary transfer of person in custody to give evidence:
  - That person consents
  - The competent authority of the requesting state must confirm in writing about protection of life, health, travel, accommodation …
Vietnamese laws – incoming requests

Use of information:

- upon a request, the SPP shall request the agencies conducting criminal proceedings of Vietnam or of a foreign country to provide information or a copy of the final court’s judgment
- Those information shall not disclosed or transmitted to any third party
Vietnamese laws – incoming requests

- All materials and the criminal procedural actions should be kept in confidential

- In case the confidentiality requirements can be breached during execution of the request, the SPP must inform the requesting party
Vietnamese laws – incoming requests

- Deal with foreign request for prosecution of a Vietnamese citizen in Vietnam:
  - Authority to consider: the SPP
  - Conditions:
    - The person committed an offence in the foreign country
    - The person is currently present in Vietnam
in conclusion:

Foreign requests =>> the SPP =>> competent authorities under Vietnamese laws

Results from competent authorities =>> the SPP =>> competent authorities in foreign countries
Vietnamese laws – sending requests

- Procedures:
  Requests => the SPP (checking validity) => competent authority of the foreign state
  Results => the SPP => Vietnamese agency which has made that request
Request for criminal prosecution:

- Conditions:
  - A foreigner has committed an offence in territory of Vietnam
  - That person escaped to a foreign country
  - That foreign country refuses to extradite that person to Vietnam
The exhibits related to that case: should be sent to the foreign country together with the case files for prosecution.
REALITY OF MLA IN CRIMINAL MATTERS

- Vietnam sending and receiving MLA requests with almost of ASEAN countries
- Forms of requests: mainly service of documents, collection and provision of evidence, criminal prosecution.
- Receiving 9 requests and sending 30 requests to other ASEAN countries.
- Crimes committed mainly are: drug-related crimes, trafficking in women, money laundering, corruption, murder, gambling, stealing property…
Some difficulties experienced

- No time limit for executing requests
  - Some cases finished in a year
  - A case has not received a reply from 2009
- Differences in law systems lead to some obstructions:
  - Double criminality (misunderstanding about the crime)
Some difficulties experienced

- Language:
  - Some countries have sent requests in their own languages that Vietnam is hard to find a good translators, especially with legal documents
Some recommendations

- Establish a network of ASEAN Central Authorities to closely coordinate activities on enhancing legal assistance of countries in the region.
- Enhance the organization of working group, seminars on special subjects => share information, learning experiences.
Some recommendations

- Prosecution offices at local level of countries sharing the same borderline may cooperate with each other to exchange information, coordinate and learn from other experiences in order to enhance the effectiveness of MLA execution.
Some recommendations

- Establish a cooperating mechanism to share information and suitable modes of operation to deal with transnational cases, of which there are criminal acts taking place in both countries, or person committing crimes is foreigner conducting criminal acts in the territory of other countries.
The Supreme People’s Procuracy of Vietnam

THANK YOU FOR YOUR ATTENTION