

THE IMPORTANT ROLE OF THE CENTRAL AUTHORITY IN DEALING WITH DIFFICULTIES DURING EXECUTION OF MUTUAL LEGAL ASSISTANCE REQUESTS

Ngo Thi Quynh Anh *

In my presentation, I would like to introduce Vietnamese regulations on basic mechanisms and procedures concerning Mutual Legal Assistance in Criminal Matters (MLA); agencies responsible for these matters; conditions and requirements to request MLA; some difficulties coped with during the process of execution and some typical cases; and the crucial role of the Central Authority in dealing with these difficulties.

I. BASIC PRINCIPLES RELATING TO MUTUAL LEGAL ASSISTANCE

The Law on Mutual Legal Assistance of Viet Nam was passed by the National Assembly and entered into force in July 2008. This law provides for principles, competences and procedures of executing legal assistance in civil and criminal matters, extradition and transfer of sentenced persons between Viet Nam and foreign countries, and responsibilities of state agencies of Viet Nam in mutual legal assistance.

A. Competent Agencies

According to Article 64 of the Law on Mutual Legal Assistance, the Supreme People's Procuracy (SPP) is the *Central Authority* of MLA activities of Viet Nam. The SPP has responsibility to receive, send, monitor and urge the execution of requests for mutual legal assistance in criminal matters; consider and decide on execution and request the appropriate People's Procuracy or investigation agency to execute requests for mutual legal assistance in criminal matters; and to refuse or postpone the execution of a request for mutual legal assistance within its competence. The SPP also has the function of building MLA treaties between Viet Nam and other countries.

The SPP delegates those functions to its Department of International Cooperation and MLA in criminal matters. The contact details are as follows: The Department of International Cooperation and MLA in criminal matters, the SPP of Viet Nam. Other state agencies involved include investigation bodies, courts and judgment enforcement bodies at all levels.

B. Scope of Assistance

Under the provisions of this Law (Article 17), forms of mutual legal assistance in criminal matters between Viet Nam and foreign states include: service of documents and other records and documents concerning mutual legal assistance in criminal matters; summoning of witnesses, experts, and persons who have rights and obligations in the case; collection and provision of evidence; criminal prosecution; exchange of information; and other forms of mutual legal assistance in criminal matters.

* Deputy Director of the Department for International Cooperation and Mutual Legal Assistance in Criminal Matters, Supreme People's Procuracy of Viet Nam.

Within its authority and responsibilities provided by law, the SPP, as the Central Authority, has to directly manage, receive and organize the implementation of those MLA cases.

C. Procedures for an Incoming Request

Requests from the competent authorities of foreign countries will be sent to the SPP of Viet Nam directly under regulations of treaties or through diplomatic channels. After receiving an MLA request sent by a foreign competent authority, the SPP records it in the register of requests for legal assistance in criminal matters, checks its validity and transmits it to the agency conducting the Vietnamese criminal proceedings for execution. If the request is not valid, the SPP returns it to the competent authority of the requesting State and specifies the reasons therefor. The SPP also offers translation services for those documents that have not been translated into Vietnamese.

If a request is under the executing authority of the Investigation Police Office or the Security Investigation Agency of the Ministry of Public Security, the SPP will transfer it to the appropriate agency of the Ministry of Public Security to execute. If a request is under the authority of the People's Procuracy at the provincial level, the SPP will transfer it to the provincial People's Procuracy to implement.

A document containing the results of a request's execution is sent back by the agency conducting the Vietnamese criminal proceedings; then, the SPP sends it to the competent authority of the requesting State according to the international treaty to which Viet Nam and that foreign State are parties, or through diplomatic channels.

If the request cannot be executed, or exceeds the time limit required by the foreign competent authority, or needs additional conditions to execute, the agency conducting the Vietnamese criminal proceedings shall inform in writing the Supreme People's Procuracy of the reasons therefor so that the SPP can notify the competent authority of the requesting State.

D. Conditions for Refusal or Postponement of the Execution of a Foreign Request

- a) A foreign request will be refused in one of the following circumstances:
 - It is not in conformity with Vietnamese laws or the obligations of Viet Nam under the international treaties to which Viet Nam is a party;
 - The execution of the request may jeopardize the sovereignty or national security of Viet Nam;
 - The request is for prosecution of a person for criminal conduct of which that person has been convicted, acquitted or granted a general or special reprieve in Viet Nam;
 - The request relates to criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Viet Nam;
 - The request relates to a violation of law which does not constitute a criminal offence under the Penal Code of Viet Nam.

- b) The execution of a foreign request for legal assistance in criminal matters may be postponed if the execution of that request would create an obstacle to the investigation, prosecution, trial or the enforcement of a judgment in Viet Nam. After

deciding to refuse or postpone the execution of a request, the SPP will inform the requesting State of the reasons therefor and measures to be taken.

II. DIFFICULTIES DURING EXECUTION OF MLA REQUESTS

The MLA requests sought mainly are for serving of documents, providing of evidence and criminal prosecution. The content of MLA requests is increasingly complicated and diverse, involving many areas and serious crimes such as murder, drug-related crimes, corruption, fraudulent appropriation of property, money-laundering etc. There is an increasing trend of not only the number but also the character and nature of requests each year.

During the process of executing MLA requests, Viet Nam copes with some difficulties such as the time-consuming nature of the process, differences of laws and regulations, taking testimony or statements via video link, attendance of foreign officers, death penalty issues, languages etc.

Specifically, the law on criminal procedure of Viet Nam provides a time limit for each stage of the investigation, prosecution and trial, while the MLA requests have no time limits for execution. Some cases took up to a year or longer to resolve; some cases pending for years are still unresolved. That is the obstacle causing delay to the domestic criminal procedure of the cases with outgoing MLA requests.

The death penalty is still applied in the Vietnamese system of punishment. Some MLA requests relating to crimes can be punished with the death penalty, and it is one of the conditions upon which foreign countries may refuse to grant legal assistance. Viet Nam must ensure in writing that the death penalty will neither be imposed nor executed, and this document must be enclosed with the outgoing request.

Vietnamese laws do not clearly regulate the measure of taking testimony or statements via video link and the attendance of foreign officers in the process of resolving domestic criminal cases.

The problem of dual criminality is also an obstacle for accepting an incoming request. It must be very clear that the committed offence specified in the request for assistance has the same character as a criminal offence stipulated in the Penal Code of Viet Nam. It is not necessary for the crime committed in the requesting State to have the exact name of the corresponding offence in Viet Nam or other related components. When checking the incoming requests, we carefully read the content of the criminal case to figure out similar characteristics that can meet the requirements of dual criminality. But in some outgoing cases, the requests from Viet Nam were refused for not satisfying the principle of dual criminality.

The requirements of each country for the form and content of an MLA request are different. Some countries need the Central Authority of the requesting State to make the request directly rather than the competent authority for the criminal case. Some countries have their own form for the incoming request. These differences in regulations and procedure can lead to the return or refusal of requests.

Recently, requests for electronic evidence have become more frequent in many MLA requests, but the methods and procedures to collect electronic evidence are different from country to country. That is a rising challenge for MLA cooperation. For example, the order for collecting electronic evidence in Viet Nam is only in force after a decision to commence an investigation into a criminal case.

The translation of outgoing requests is also an issue to be dealt with. Most countries require the requests and dossiers to be translated into their national languages. MLA requests with legal terms are not easy to translate, so it leads to misunderstanding. It is difficult for the central authorities to ensure the quality of translations into many different languages, and we have to rely on the translators. Some requests have been returned due to the poor quality of the translation.

III. THE IMPORTANT ROLE OF THE CENTRAL AUTHORITY

The Central Authority has to have enough capacity to manage all issues and problems of incoming and outgoing requests. The Central Authority has to stay regularly updated on the foreign partners' laws relating to MLA in order to strictly conform with these rules when sending requests. Therefore, accumulating experience of dealing with different types of MLA with countries that have other legal systems is important work for MLA practitioners.

With domestic competent authorities making requests to foreign countries, the Central Authority guides them on how to make complete, accurate and clear requests that will enable the requested State to fully understand the content and purpose of the request so it can be properly executed.

With domestic competent authorities executing the incoming requests, the Central Authority carefully explains the foreign regulations, needs and ways in which the request can be executed within a reasonable time. The aim of developing the spirit of reciprocity for future cooperation is really important.

With foreign countries, establishing a channel of direct contact between the central authorities on mutual legal assistance in criminal matters between Viet Nam and other countries is key. This is an important factor to ensure the transfer and receipt of a request for assistance, shorten the time for assistance, exchange of legal information and exchange of difficulties and measures to resolve during execution of requests. Through direct contact, it is important to build personal relationships with fellow practitioners to strengthen and promote international cooperation by organizing annual bilateral central authorities' meetings, visits and MLA experience exchange seminars.

Viet Nam has a very valuable instance of successful international cooperation. It was a matter involving several years of cooperation between Singapore and Viet Nam that resolved in September 2021. A Vietnamese national was accused of organizing illegal online gambling activities and was sentenced to imprisonment in Viet Nam. Upon requests from the Vietnamese authorities for assistance from 2018, the Singapore authorities worked towards seizing the funds in Singapore belonging to the accused, for the purposes of returning them to Viet Nam *via* the formal asset recovery route. At that time, the Singapore authorities seized the said funds of the accused pursuant to domestic law. When it came to the fact that the return of the funds would not be possible *via* the formal asset recovery

route, Singapore's central authority invited Vietnamese authorities to participate as victim claimants in a domestic inquiry convened by the Singapore court for the disposal of the funds seized by the Singapore authorities (the "DI") pursuant to their domestic law. The Singapore authorities then persuaded the Singapore court to hear the accused and the representative of the Vietnamese authorities at the DI *via* video link from Viet Nam due to the travel restrictions imposed on account of the Covid-19 pandemic. The accused consented to voluntarily repatriate funds amounting to over US\$2.65 million and S\$126,000 to the Department of Civil Judgment Enforcement of Viet Nam. Then the funds were returned to Viet Nam in September 2021 pursuant to a disposal order issued by the Singapore court, upon hearing the accused, the Vietnamese authorities, and the Singapore authorities at the DI.

This is an example of effective cooperation. We had meetings in person, online meetings, phone calls and emails to exchange information, explain domestic laws, give advice etc. We had worked together in every step of Singapore's procedures. Sometimes, we thought that it was too difficult to go through, but we tried with our best efforts. Our fellow practitioners in the AGC of Singapore instantly provided updated information and papers needed to be delivered from the Vietnamese side to the competent court of Singapore. With the positive help of the Attorney General's Chambers of Singapore, the sum of money from that bank account had been transferred to the competent judgment enforcement body of Viet Nam.