

COUNTRY PRESENTATION OF VIET NAM

*Thi Quynh Anh Ngo**

Mr. Chairman,

Your Excellencies and distinguished guests,

First of all, I would like to thank the hosts, Japan and UNAFEI, for organizing this important event so that the participating countries can share experiences in mutual legal assistance and extradition. Then, we can strengthen the rule of law and our judicial systems and legal infrastructure in order to successfully cooperate and effectively combat crimes.

In my presentation, I would like to introduce Vietnamese regulations on basic mechanisms and procedures concerning MLA and extradition; agencies responsible for these matters; conditions and requirements to request MLA and extradition; some difficulties coped with during the process of execution and some typical cases; experiences and instances of MLA and extradition; and some recommendations for enhancing the effectiveness of the assistance.

A. Basic Principles Relating to Mutual Legal Assistance and Extradition

The Law on Mutual Legal Assistance of Viet Nam was passed by the National Assembly and entered into force on 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.

1. Mutual Legal Assistance in Criminal Matters

(i) 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 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.

Address: 44 Ly Thuong Kiet Street, Ha Noi, Viet Nam
Phone: +84 38255058 – ext 428.

* Head of Division for Mutual Legal Assistance in Criminal Matters, International Cooperation Department, Supreme People's Procuracy of Vietnam.

Email: tttp_mla@vks.gov.vn

Other state agencies involved: Investigation bodies and courts at all levels.

(ii) 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.

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.

(iii) Procedures for an In-coming 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 therefore. The SPP also offers translation services for those documents that have not been translated into Vietnamese.

If a request is under 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 Vietnam and that foreign state are parties, or through diplomatic channels.

If the request cannot be executed, 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 therefore so that the SPP can notify the competent authority of the requesting State.

(iv) 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 therefore and measures to be taken.

2. Extradition

(i) Competent Agencies

The Law on Mutual Legal Assistance of Viet Nam stipulates the responsibility of the Ministry of Public Security as the Central Authority for extradition (Article 65). The Ministry of Public Security must receive, send, consider, and execute foreign requests for extradition. Other state agencies involved are the SPP and the Supreme People's Courts, the provincial People's Procuracies and Courts.

(ii) Extraditable Offences

Extraditable offences are offences punishable, under the criminal laws of both Viet Nam and the requesting state in force at the time of extradition, by imprisonment for a period of at least one year, life imprisonment, or death, or in cases where the offender has been sentenced by the court of the requesting State to imprisonment and the remaining term of imprisonment to be served is at least six months.

However, it will not matter whether the laws of both Viet Nam and the requesting state place the referred conduct within the same category of offence or denominate the offence by the same terminology.

Where the referred offence has been committed outside the territory of the requesting state, extradition may be granted if it is a criminal offence under the Penal Code of Viet Nam.

(iii) Conditions for Refusal of Extradition

(a) Compulsory refusal: Viet Nam will not grant extradition in any of the following circumstances:

- The person whose extradition is requested is a Vietnamese citizen;

- Under the laws of Viet Nam, the person whose extradition is requested cannot be prosecuted or does not have to serve the sentence imposed due to lapse of the statute of limitations, or for other legitimate grounds;

- The person whose extradition is requested for prosecution has been convicted under a final judgment by a Vietnamese court for the conduct to which the request relates or the case has been suspended according to the criminal procedure laws of Viet Nam;

- Where the competent authorities of Viet Nam have reasonable grounds to believe that the request for extradition has been presented with a view to prosecuting or punishing the person sought by reason of race, religion, sex, nationality, social status, or political opinions;

- Where the request for extradition relates to more than one offence and each offence is punishable under the laws of the requesting State but does not meet the demands of extraditable offences under Vietnamese laws.

(b) Optional refusal: The agencies conducting criminal proceedings of Viet Nam may refuse to grant extradition in any of the following circumstances:

- The conduct committed by the person whose extradition is requested does not constitute an offence under the Penal Code of Viet Nam;

- The person whose extradition is requested is being prosecuted in Viet Nam for the offence for which extradition is requested.

(iv) Procedures

After receiving the request for extradition and the accompanying documents sent by a foreign competent authority, the Ministry of Public Security will enter this fact in the extradition register and examine the validity and feasibility of the request. The Ministry of Public Security may request the foreign competent authority to furnish additional information. If that additional information is not received by the Ministry of Public Security within 60 days from the date of sending the request for that information, it will return the dossier of request for extradition to the requesting state and inform that state of the reasons for the return. If the dossier is valid, the Ministry of Public Security will transmit the dossier to the competent People's Court at the provincial level for consideration and decision.

The Provincial People's Court where the person whose extradition is requested is residing, detained or serving the sentence of imprisonment must entertain the request transmitted by the Ministry of Public Security and inform in writing the People's Procuracy at the same level. Within the time limit for considering the request for extradition, the People's Court at the provincial level may request the foreign competent authority for clarification of uncertain points in the request for extradition. The request for extradition and the reply will be transmitted through the Ministry of Public Security of Viet Nam.

Within four months of consideration, the People's Court at the provincial level will issue one of the following decisions: (1) consider the request for extradition if it satisfies all the requirements prescribed; (2) suspend the consideration of the request and return the dossier of request to the Ministry of Public Security if any reason renders the consideration of the request impossible. Then, the People's Court at the provincial level must consider the request for extradition within 30 days of the issuance of the decision to consider the request and transmit a set of the dossier of request to the People's Procuracy at the same level. The request for extradition will be considered at a hearing of a chamber consisting of three judges, one of whom shall chair the hearing, and a representative of the People's Procuracy at the same level. The People's Court at the provincial level will send the decision to the person

whose extradition is requested, to the People's Procuracy at the same level, and to the Ministry of Public Security for exercising their legal rights and duties.

The person whose extradition is requested has the right to appeal; the People's Procuracy at the same level and the Supreme People's Procuracy have the right to protest the decision issued by the People's Court at the provincial level. The Supreme People's Court reviews any decision of the People's Court at the provincial level which is appealed or protested. The appellate court will decide whether to extradite or refuse to extradite the person sought. The Ministry of Public Security will arrange the execution of the decision on extradition and inform in writing the requesting State thereof.

B. Experiences and Instances of MLA and Extradition

In 2011 and the first 6 months of 2012, Viet Nam received 74 MLA requests and 2 extradition requests from other countries, mostly from European countries. Viet Nam also sent 54 MLA requests and 2 extradition requests to foreign countries. The MLA requests sought mainly are for serving of documents, providing of evidence, and criminal prosecution. Actually, the content of MLA requests are more and more 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 a increasing trend of not only the number but also the character and nature of requests.

During the process of executing MLA and extradition 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 from 2009 are still unresolved. That is the obstacle causing delay to the domestic criminal procedure of the cases having 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 refusal conditions of foreign countries. Besides, Vietnamese laws do not permit the measure of taking testimony or statements via video link and the attendance of foreign officers in the process of resolving domestic criminal cases. However, Viet Nam recently has implemented projects of judicial reform including supplementing and amending laws relating to criminal procedure and international cooperation. Those matters mentioned above have been taken into consideration.

Typical successful case: one of the most successful instances is the assistance between Viet Nam and Japan in 2010 - 2011. That was a case of tax evasion and unfair competition crimes that happened in a Japanese company (short name is PCI) having its head office in Tokyo. This company had some contracts with a Vietnamese company and underground agreements with the Vietnamese director to receive mutual personal benefits. That Vietnamese director also was a defendant of a criminal case for receiving bribes in Viet Nam. In order to get enough evidence to prove the crimes, both competent agencies of Japan and Viet Nam sent requests to each other asking for assistance in providing information and documents in their respective jurisdictions. Because there is no MLA treaty between Japan and Viet Nam, the assistance based on assurance of reciprocity and the MLA requests were sent through diplomatic channels. As a result, the competent authorities of Japan had used evidence from Viet Nam to prosecute and punish Japanese criminals. Respectively, with

thousands of papers as evidence from the Japanese, the Courts in Viet Nam successfully adjudicated the corruption case and sentenced the accused to 20 years' imprisonment.

C. Some Recommendations

To speed up the process, a network of Central Authorities with full details of contact persons should assist the close coordination, information exchange and activities on enhancing legal assistance of countries.

The contents of sending requests should have enough information related to the case and its legal basis, including information on the time limit for domestic procedures to resolve the case.

Organizing more seminars on special subjects and working groups will help participating countries share information, updates on foreign laws in force and learning experiences with others.

Southeast Asian countries must establish a cooperating mechanism to share information and suitable modes of operation to deal with transnational cases where criminal acts take place in both countries or where the person to be extradited is a foreigner who engaged in criminal acts in the territory of other countries.

Thank you for your attention.