



## Joint Actions and Cooperation of the Judiciary – Answer to Organized Crime

---

Branko Hrvatin

President of the Supreme Court

Supreme Court of the Republic of Croatia

### *Introduction*

Today's basic guiding principle of free movement of goods, services, money constitutes quite a challenge for modern society. Common market, community without the borders, globalization are the factors which facilitate the fluctuation of people. Those factors provide opportunities for business to develop – the legal ones but unfortunately the illegal and criminal ones as well.

The crimes became more sophisticated, spreading their activities across the borders of one state, gripping to the governmental system so that it is sometimes difficult to separate legal from illegal segments. Unison answer of the judicial authorities of the modern society to that situation is an imperative.

EU as well as UN has already built the efficient and powerful legal framework to fight the crime. This activity is on-going process. But a legal tradition, philosophy and existing complementary laws define the integration of such provisions in the national legal systems. It cannot be avoid easily. Putting on the hat of the spirited judge can be more difficult as it may seem.

### *Legal framework*

Passing the law i.e. setting up the legal framework is only first step since the provisions have to be applied to the particular case. Hence is the importance of the national courts, especially of the highest courts in the respective states. Give or take the supreme courts show guidance to the lower courts by interpretation and/or explanation as well as by applying the provisions which origin in international legal instruments (conventions, treaties, regulations, directives). This is of outmost importance when the human rights are at stake. The highest courts should be guardians of the legal system with the view of the protection of human rights.

### *Role of the courts*

Approximation of the legal views and standards of the supreme courts of the respective states and harmonization of their case law concerning protection of society from the crime and also preserving the human rights of the perpetrators, should be their common goal. The unanimous answer of the judiciary to the crime contributes to the safety, security and finally to the peace in the global community. Judicial cooperation at that level is essential.

The rulings of the courts, including the highest court, implicating the cross border elements, have effects not only within the concerned member state but also outside of its borders. The courts in one state must be able to recognize and understand the decision of their colleagues from some other state and consequently to enforce such decision.

The national courts/judges must be aware of the fact that their rulings have effect in wider community and induce their responsibility for those rulings.

The highest courts of the state are carrying the great responsibility. In that view their cooperation and collaboration are essential and important. Establishing the firm bonds between supreme courts of respective states linking them in vertical cooperation is a path to mutual understanding and effective network. Consequently this will contribute in setting up the efficient and strong tools to fight the national as well as international crimes, safeguarding in the same time the fundamental human rights.

This is also a way for establishing the solid and firm ground for appliance of the principle of mutual recognition between judicial authorities of different countries in everyday practice. Namely in the EU the mutual recognition was promoted as the cornerstone of judicial cooperation already at the Tampere European Council in 1999 and introduced by the Maastricht Treaty under Title V (provisions on a common foreign and security policy).

### *Mutual recognition*

As it has been said, open borders can easily be misused by the organized crime. To fight an organized crime spread across several countries, or to bring to justice an offender who tries to hide in some country or to hear the testimony of a witness who is in another country, judicial cooperation is necessary.

A traditional cooperation through mutual legal assistance may be slow and complex at times. It no longer corresponds to the today's reality where people circulate easily. A more advanced form of judicial cooperation is needed and this is mutual recognition of judgments and judicial decisions - a process by which a decision taken by a judicial authority is recognized and enforced by other country as if it was a decision taken by the judicial authorities of that latter country. This is a key concept in the field of judicial cooperation, as it helps to overcome the difficulties stemming from the diversity of judicial systems.

Enhancing the mutual recognition aims to uplift the efficiency of cooperation between authorities. It is based on mutual confidence and common respect of human rights and fundamental freedoms as they are set in the treaties. Seeing from the judge's perspective embracement of this trans-nationality dimension arouses not only technical questions derived from comparative differences but also legal and political ones. Legal problems relate to the (in)compatibility of particular legal systems as well as their interaction capacity, in the other hand political dilemma relates to the role of judges in the jurisdiction of respected state.

The developing and strengthening of freedom, security, justice and consequently peace is one of the main aims of modern society. These endeavours are necessary in building mutual trust and the rule of law. In the same time this is the way to give judiciary solid and efficient framework so it can fulfil its duty.

But this framework should be put in the hands of competent, independent and impartial judge. Trafficking on human beings, breaching the human rights and corruption present the cancer of the modern society. For the organised crime there are no restricted zones, they have no scruples and they does not refrain from corrupting anybody and everybody in gaining their goals. But in today's world there are few things worse than corrupted judge and there is little if anything one can do to fix him/her up. The judge and judiciary are the ultimate legal sanctuaries for the victimised, wounded and disempowered persons. If that sanctuary were compromised there is no chance for peace. The legislation lives only through practice, through rulings of the judiciary in particular cases. The judiciary, judges in the first place are creators of the justice which is determined not only by their understanding of some provisions and their appliance in particular case but also with their integrity and commitment to bring the justice.

Adding to what has been emphasised earlier, strengthening of the legal standards and approximation of the case law will increase the mutual trust into each other's legal system and would result in enhancing the principle of mutual recognition. There is a common consensus that it should be supported and broadened beyond the EU's boundaries. The efforts should be especially concentrated in searching, seizing and confiscating the assets of the organised crime. The organised crime understands only a talk of money since gaining the money is their ultimate goal no matter what. Dispossession of the money is what hurts them most since their only purpose and their essence reflect in the fact how much money they "earn". In the other hand seized means should be used to ease the pain and suffering of the victims of that organised crime.

In order to achieve more effective judicial cooperation in criminal matters in fighting the organised crime the assessment of the current legal instruments can open new frontiers and direct the new legislative proposals towards effective development of a common judicial area.

In ever changing world the new challenges are already on the horizon. Only networking and linking of the judiciary, especially judges in vertical and horizontal cooperation can give an answer to those challenges ahead of us. It should be strongly emphasized that the responsibility of the judges – practitioners who apply the law surmounts the national legal system and borders of the concerned state. The community gives the security and confidence to its members, but it should be protected from endangerment of criminals who ever they are so it could be the safe place to live in.