

MEMORANDUM

on Agreement to Achieve and Advance Mutual Cooperation in Fighting All Forms of Severe Crime

between

**Public Prosecutor's Office and War Crimes Prosecutor's Office
of the Republic of Serbia
and
Prosecutor's Office of Bosnia and Herzegovina**

Public Prosecutor's Office of the Republic of Serbia and War Crimes Prosecutor's Office of the Republic of Serbia and the Prosecutor's Office of Bosnia and Herzegovina (hereinafter: the Participants);

aware of the increase in severe criminal offenses, especially organized crime, illicit trafficking in narcotic drugs, smuggling of persons, trafficking in persons, trafficking in arms, corruption, money laundering and international terrorism and related criminal offenses, the fight against which entirely or partially falls under the competence of the Participants to this Memorandum,

cognizant of the fact that mutual exchange of information, collecting evidence and necessary facts would facilitate establishing of criminal responsibility for the committed war crimes and bring suspects to justice,

taking into account that the above-mentioned criminal activities are very detrimental to the economic, financial and other social interests of their respective countries and that there is a common interest to establish culpability and punish perpetrators of war crimes,

convinced that a more direct and faster cooperation between the signatories of this Memorandum will contribute to the common interests of their respective countries in achieving a more efficient investigation, presentation of evidence and prevention of criminal activities,

wishing, with the purpose of achieving that goal, to develop and enhance direct cooperation, in particular in fighting the above-mentioned criminal offenses, have agreed on the following issues:

AREA OF APPLICATION

1. The Participants shall cooperate in accordance with the provisions of this Memorandum and will render assistance to each other at a request or at their own initiative, pursuant to the provisions of this Memorandum and abiding by the laws and regulations of their respective countries and the international bilateral and multilateral agreements between Serbia-Montenegro and Bosnia and Herzegovina that are in force.
2. The assistance may include in particular:
 - a) gathering and exchanging information, reports and documents, when no coercion is required for that purpose, including statements of suspects or other persons,
 - b) exchanging information that enable or contribute to the investigation or prevention of criminal activities,
 - c) exchanging laws and other legislation from the scope of criminal law and other fields when necessary for conducting criminal procedure,
 - d) exchanging legal opinions in the field of criminal law, as needed,
 - e) exchanging other pieces of information, such as telephone and fax numbers, e-mail addresses and the like.
3. This Memorandum shall not prevent the Participants from using other commonly acceptable modes of cooperation as well, abiding by the laws, regulations and procedures of their respective countries.
Nothing in this Memorandum shall affect the precedence of application of provisions of the international instruments on international judicial assistance.

INFORMATION

4. In the aim of creating the most favorable conditions for cooperation, the competent state Prosecutor's Offices shall send out and receive requests directly, pursuant to this Memorandum.
The participants shall exchange the necessary information on the names of State Prosecutors, addresses, telephone numbers operational in the course of office hours and hotline numbers, as well as the other information enabling direct communication.
5. Authorized officials for coordination of cooperation on the part of the Public Prosecutor's Office and the War Crimes Prosecutor's Office of the Republic of Serbia shall be:
 - Deputy Public Prosecutor of the Republic of Serbia,
 - Deputy War Crimes Prosecutor of the Republic of Serbia.
 - Prosecutorial Focal Point of the South Eastern Europe Prosecutors Advisory Group

Authorized officials on the part of (on behalf of) the Prosecutor's Office of Bosnia and Herzegovina shall be:

- Deputy Chief Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina – Head of the Special Department for Organized Crime, Economic Crime and Corruption,
- Deputy Chief Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina – Head of the Special Department for War Crimes.

FORM AND CONTENTS OF REQUEST FOR ASSISTANCE (COOPERATION)

6. The request for assistance (cooperation) shall be submitted in writing. However, in case of emergency, the request may be submitted verbally, i.e. through telecommunications means.

The verbal request shall be confirmed in writing within 48 hours, unless the Participant to whom the request has been submitted agrees otherwise. Translation into the language of the country of the Participant to which the request has been submitted shall be attached to the request and the enclosed documents, unless otherwise agreed.

7. The request shall contain:

- (1) the name of the state Prosecutor's Office conducting the procedure or other measures in relation to which the request is submitted;
- (2) summary of the facts of the case and nature of the procedure, including the description of the particular criminal offense with reference to the appropriate articles of the law and legal description of the act;
- (3) the reason why information or other assistance is being requested;
- (4) description of the contents of the information or other requested assistance;
- (5) depending on the circumstances, the information on the identity, citizenship and whereabouts of the person possessing information or the suspect.

8. When necessary and to the extent possible, the request shall also contain:

- (1) list of questions for the person that is to be questioned;
- (2) description of the procedure that would be desirable to follow when fulfilling the request;
- (3) information on compensation, expenses that will be paid out, as well as the protection that the person required to show up is entitled to, pursuant to Item 26;
- (4) any other piece of information that can be of assistance in the fulfillment of the request.

FULFILLMENT OF REQUEST

9. The request shall be fulfilled as soon as possible, pursuant to the procedure envisaged by the laws and regulations stipulating execution of activities by the Participant to which the request has been submitted.

The Participant to which the request has been submitted may ask for additional information, if necessary for the fulfillment of the request.

10. The Participant to which the request has been submitted shall endeavor to act in compliance with the requests of the Participant that has submitted the request, provided it is not contrary to the fundamental legal principles of the country of the Participant to which the request has been submitted.
11. The Participant to which the request has been submitted shall pay regular expenses pertaining to the fulfillment of the request. Any extraordinary expenses shall be subject of mutual agreement of the Participants before they are incurred.

USE OF INFORMATION AND DOCUMENTS

12. The Participant to which the request has been submitted shall undertake everything necessary to keep the request and/or the contents thereof confidential, if such confidentiality is requested by the Participant that has submitted the request. If the fulfillment of the request could or shall lead to violation of confidentiality, the Participant that has submitted the request shall be informed about it prior to the fulfillment. The Participant that has submitted the request may subsequently, and irrespective of it, demand that the request is fulfilled.
13. The Participant to which the request has been submitted shall, if requested, inform the Participant that has submitted the request on the progress in relation to the fulfillment of the request.
14. If the fulfillment of the request does not fall within the competence of the Participant to which the request has been submitted, that Participant shall immediately inform the Participant that has submitted the request about that fact.

EXCEPTIONS TO OBLIGATION TO RENDER ASSISTANCE

15. The Participant to which the request has been submitted may refuse to fulfill the request for assistance:
 - (1) if the fulfillment of the request may be detrimental to the sovereignty, security and/or other fundamental interests of the country of the Participant providing the assistance, or if contrary to the legal provisions of the country of that Participant;
 - (2) if the Participant to which the request has been submitted deems that the fulfillment of the request would affect criminal procedure in its country.
16. Prior to the refusal of assistance pursuant to Item 15, the Participant to which the request has been submitted shall consult with the Participant that has submitted the request in order to determine whether assistance could be rendered under certain conditions. If the Participant that has submitted the

request accepts the conditions, that Participant shall be obliged to comply with them.

17. Should the Participant to which the request has been submitted decline assistance, the Participant that has submitted the request shall be informed about it verbally as soon as possible, and in writing within 15 (fifteen) days in any case.

RESTRICTIONS IN USE OF RESULTS OF FULFILLED REQUEST

18. The result of the requests fulfilled pursuant to this Memorandum cannot be used for the purpose different to the purpose for which assistance was requested and rendered without the permission of the Participant that has rendered the assistance.
19. The information pertaining to persons may be handed over to other competent bodies, only if the Participant to which the request has been submitted explicitly grants it in writing and, if the law, by which the Participant that receives the request abides, allows for such other use.
20. The Participant to which the request has been submitted may ask that the result of the request fulfilled pursuant to this Memorandum is kept confidential or used exclusively under the precisely specified conditions. If the Participant that has submitted the request accepts the result of the request fulfilled under those conditions, that Participant shall do everything in its power to ensure that those conditions are complied with.
21. This Memorandum shall not prevent the use or disclosure of the results of a fulfilled request where it is necessary pursuant to the law and regulations stipulating the actions of the Participant that has submitted the request in the pre-investigative or the criminal procedure. The Participant that has submitted the request is obliged to inform the Participant to which the request has been submitted in advance about such possible or mandatory use or disclosure of the results of the request fulfilled.
22. Should the Participant that submitted the request pursuant to Item 18 of this Memorandum announce the results of the request fulfilled, they may be used subsequently for all the lawful purposes, with restrictions stipulated in Articles 19-21 of this Memorandum.

PROVIDING RECORDS AND ESTABLISHING IDENTITY AND LOCATION OF PERSONS AND PROPERTY

23. A Participant may request to be forwarded records of the country of the other Participant that are important for conducting the procedure. The Participant to which the request has been submitted shall hand over photocopies of publicly available records to the Participant that has submitted the request.

24. The Participant to which the request has been submitted may hand over photocopies of all of its records that are not publicly available only insofar and under the same conditions under which they will be made available to the competent authorities of that country and if that is not contrary to the legislation of the country of the Participant to which the request has been submitted.
25. If a request is submitted asking to establish, through the competent police bodies, the identity and whereabouts of a person or to obtain the information on the property located in the territory of the country of the Participant to which the request has been submitted, the Participant to which the request has been submitted shall do everything in its power in order to fulfill that request in compliance with the laws and regulations of its country as soon as possible.

RETURN OF DOCUMENTS, MATERIALS AND PROPERTY

26. If possible and if the Participant to which the request has been submitted requests so, the Participant that has submitted the request shall return the documents, materials and property handed over as a result of the fulfilled request.
27. The Participant that has submitted the request may, with consent of the Participant to which the request has been submitted, postpone the return of any requested document, material or property, if it is necessary for the purpose of conducting criminal or civil court procedure.
28. The Participant to which the request has been submitted may request from the Prosecutor who has submitted the request to agree on the conditions necessary in order to protect the interest of third parties with regard to the documents, materials or other property that should be handed over.

IN COMPLIANCE WITH PRINCIPLES ESTABLISHED IN EUROPEAN CONVENTION ON PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

29. The Participants hereby accept that the cooperation and the activities undertaken pursuant to this Memorandum shall be in compliance with the European Convention on the Protection of Human Rights and Fundamental Freedoms.

CONSULTING

30. The Participants shall consult with each other in order to agree about the continuous and efficient implementation of this Memorandum.
The Participants shall resolve all difficulties stemming from this Memorandum by way of consultations and negotiations.

FINAL PROVISIONS, COMMENCEMENT AND TERMINATION

31. The Participant to this Memorandum which no longer wishes to participate in it shall inform the other Participant thereof in writing 3 (three) months in advance.
32. Any amendments or addenda to this Memorandum may be made with written consent of the Participants. Other agencies may be included in this Memorandum with the Participants' consent.
33. The Participants shall meet in order to assess the implementation of this Memorandum upon a request or 2 (two) years from the date of its coming into force, unless they inform each other in writing that such assessment is not necessary.
34. This Memorandum shall come into force upon its signing.

The above record constitutes the agreement reached between the Public Prosecutor of the Republic of Serbia, War Crimes Prosecutor of the Republic of Serbia and the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina.

Signed in Belgrade, _____, on _____ 2005, in 6 (six) copies in the Croatian, Bosnian and Serbian languages, two copies in each language, whereby all the three texts are equally valid.

**Chief Prosecutor of Prosecutor's
Office of Bosnia and Herzegovina**

[signature affixed]
Marinko Jurčević

**Acting Public Prosecutor
of the Republic of Serbia**

[signature affixed]
Slobodan Janković

**War Crimes Prosecutor
of the Republic of Serbia**

[signature affixed]
Vladimir Vukčević