

ACQUISITION OF EVIDENCE ABROAD AND THE QUESTION OF ITS ADMISSIBILITY

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I. ADMISSIBILITY OF EVIDENCE ACQUIRED ABROAD IN SLOVENE CRIMINAL PROCEDURES AND THEIR EXCLUSION

The Slovene courts and state bodies that participate in a criminal procedure are entitled on the basis of the first paragraph of Article 18 of the Slovene Criminal Procedure Act (hereinafter: ZKP)¹ to decide whether a certain fact has been established or not, whereby they are not bound by or restricted by any special formal evidentiary rules². Discretionary consideration of evidence applies both to evidence that was obtained in the territory of the home state as well as to the evidence that was obtained in the territory of a foreign state³. The Slovene legislation does not differentiate between evidence obtained domestically and the evidence that was obtained abroad. In both instances the issue revolves around evidence, which, however, may have been obtained in different ways.

It is nonetheless up to the court alone to decide which evidence it shall consider at all and how it shall consider its credibility. A Slovene court may also decide to include in evidence materials that were not obtained in accordance with the ZKP, as it must, given the principle of material truth, truthfully and completely establish the facts relevant for the issuance of a lawful decision and thus ensure that the matter at hand is investigated wholly and that the whole truth of the matter is brought to light⁴.

A Slovene court is indeed not bound to any formal rules on the basis of discretionary consideration of evidence, however, the court may not establish a court decision on the basis of evidence that was obtained in violation of constitutionally determined human rights and fundamental freedoms, nor on the basis of evidence that was obtained in violation of the provisions of criminal procedure whereby this Act stipulates with regard thereto that a court decision may not be established thereon, or which were acquired on the basis of such inadmissible evidence⁵. Undoubtedly, foreign evidence is, in principle, admissible as per Slovene legislation; however, the provision of the second paragraph of Article 18 of the ZKP is applicable to it as well, which means that if it was obtained contrary to this provision, it must be excluded from the brief⁶.

There are no legally binding rules on the consideration of evidence admissibility in the European Union, and the regulation of the field dedicated to the issue of evidence admissibility is left up to the Member States, which is why I believe that when considering evidence obtained abroad, a Slovene court must firstly determine whether this evidence was obtained abroad:

- i. independently for the purpose of a procedure in the foreign country in accordance with its regulations,

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¹ Official Gazette of the RS, no. 63/1994 of 13 October 1994, with amendments.

² The principle of discretionary consideration of evidence.

³ In relation to the stated, it should be noted that the 'territory of a foreign state' may relate to a Member State of the European Union, or to another country that is not a member of the European Union, or 'third country'.

⁴ Article 17 of the ZKP.

⁵ The second paragraph of Article 18 of the ZKP states: 'The court may not base its decision on evidence obtained in violation of the human rights and basic freedoms provided by the Constitution, nor on evidence which was obtained in violation of the provisions of criminal procedure and which under this Act may not serve as the basis for a court decision, or which were obtained on the basis of such inadmissible evidence'.

⁶ Evidence that was obtained in another country cannot be admissible if it was obtained using torture contrary to Article 3 of the European Convention on Human Rights or if the right to defence was violated contrary to Article 6 of the European Convention on Human Rights.

- or on the basis of
- ii. international legal assistance or a European investigation order, or
 - iii. international cooperation in joint investigation teams.

In this consideration the court must further consider the following:

- i. whether the evidence obtained abroad was obtained legally, and
- ii. whether it was obtained in violation of a constitutionally⁷ or internationally legally determined human right and fundamental freedom.

A. 'Independent' Acquisition of Evidence

If Slovene bodies obtain evidence in the territory of the Republic of Slovenia, they are bound by national constitutional and statutory regulations. In the same manner, foreign bodies are bound by their constitutional and statutory regulations when detecting and investigating criminal acts in their territory. It cannot be expected from foreign bodies to comply with foreign law when detecting and investigating criminal acts in their own territory. Foreign bodies must comply with their own legislation and it cannot be requested from them to comply with foreign constitutional and statutory provisions, especially those that may only be addressed to state bodies in the territory where a state exercises its sovereignty. We cannot expect that foreign security or judicial bodies question themselves whether they are complying with foreign legislation when investigating criminal acts in their own territory. When foreign bodies investigate a criminal act that was committed in their territory and that is punishable in accordance with their legislation, they must comply only with their own regulations, and foreign bodies cannot and must not have an influence in this respect.

It cannot be expected in the field of international cooperation in criminal matters that all states will have their legislation harmonized with the legislation of the Republic of Slovenia. Insisting on complete compliance of evidentiary rules would disable international assistance in criminal matters and therewith international cooperation in criminal matters as well. When Member States of the European Union act independently in the investigation of criminal acts in their territories for the purposes of their own procedure, then the principle of trust applies for such obtained evidence, as concluded from the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union that the Council prepared on the basis of Article 34 of the Treaty on European Union⁸. The Convention further implies trust in the structure and operation of the legal systems as well as the competence of all Member States to ensure a fair trial. Given the fact that sometimes criminal procedures take place parallelly in states, it would be practically and theoretically impossible to expect that all foreign bodies would act simultaneously on the basis of at least two different sets of legislation when investigating criminal acts. The thought that this could or even should be done is also contrary to the preamble of the Convention that alerts to the fact that it is in the common interest of the Member States to ensure mutual legal assistance among Member States in a speedy and efficient manner.

In Slovene case law, several decisions argue that from the standpoint that individual procedural acts performed by a foreign body are valid despite the fact that they were not carried out in the manner prescribed by the ZKP (e.g. judgement Kp 16/2007 of 30 May 2005⁹ and judgement XI Ips 44415/2010 of 22 June 2010)¹⁰ or that evidentiary materials obtained and submitted to Slovene bodies by a foreign security body have equal evidentiary value as the materials obtained by the Slovene police in accordance with the provisions of the ZKP (judgement I Ips 290/2006 of 31 August 2006)¹¹. The latest case law has also taken the view that acts performed by the foreign competent bodies are to be firstly assessed in the light of their domestic constitution and legislation, and only then it is to be assessed whether such acts are materially compliant with the standards prescribed by our Constitution¹² (judgement I Ips 199969/2010-279 of 14 February 2012)¹³.

⁷ And not also a statutory determined human right and fundamental freedom, as it has already been considered.

⁸ The Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union (Official Journal of the European Communities C 197/1 of 12 July 2000).

⁹ Summarized from the webpage: <http://www.sodisce.si/vsrs/odlocitve/22347/>, accessible on 20 August 2018.

¹⁰ Summarized from the webpage: <http://sodisce.si/vsrs/odlocitve/2010040815245481/> accessible on 20 August 2018.

¹¹ Summarized from the webpage: <http://sodisce.si/vsrs/odlocitve/26125/>, accessible on 20 August 2018.

¹² Official Gazette of the RS, no. 33-1409/1991 of 28 December 1991 with amendments.

Slovene case law shows that when considering the admissibility of evidence obtained from abroad, the object of consideration must be whether the evidence was collected in accordance with the national laws of the state where such evidence was collected, and whether such acts are materially compliant with the standards of the Constitution of the Republic of Slovenia. We must contemplate certain institutes of the Constitution only in the sense that they are binding upon Slovene bodies and not upon foreign ones. The object of consideration must not be foreign legislation and its compliance with the Slovene ZKP or Slovene Constitution, as it is impossible to expect that the content of foreign regulations and the performance of individual procedural acts would be identical to those in Slovenia. The mere different regulation of an individual procedural act does not automatically imply its illegality and the exclusion related thereto. Procedural acts performed by foreign bodies must not be considered on the basis of the Slovene ZKP, but only in light of the foreign legislation.

In a Slovene criminal procedure, the defence may propose to the court that individual evidence be excluded from the brief, whereby the legality of the collected evidence must also be monitored by the prosecutor and the judge¹⁴. The defence may therefore object that a piece of evidence obtained abroad is illegal and that it must be excluded, as it was not obtained in an admissible manner, under the conditions and procedure as per domestic law, namely, due to the fact that:

- the house search abroad was ordered by a police officer and not a judge;¹⁵
- two witnesses were not present during the performance of the house search abroad;¹⁶
- the foreign criminal procedural act does not include a legal instruction on the privilege against self-incrimination or the right to remain silent, and that foreign bodies did not explicitly state the right to remain silent¹⁷ in the record on the interrogation of the suspects¹⁸.

The response by the prosecution or the court to the defence's objection could be that if the foreign evidence was obtained independently of the request or cooperation of another state, i.e. by foreign bodies for the purposes of their own procedure, then the procedural acts performed by the foreign body are also valid in a criminal procedure that takes place in Slovenia, despite the fact that they were not carried out in the manner prescribed by the ZKP, and that other requirements laid down either by the Constitution or the ZKP, such as the presence of two witnesses during a house search, and the necessity of an issued court order for a house search, are merely procedural requirements prescribed by the Constitution and only bind Slovene bodies, and that we cannot request that a foreign state has to comply with the Slovene procedural constitutional and statutory provisions, and that Slovenia protects human rights in its territory in accordance with Article 5 of the Constitution¹⁹.

¹³ Summarized from the webpage: <http://www.sodisce.si/vsrs/odlocitve/2012032113042029/>, accessible on 20 August 2018.

¹⁴ The second paragraph of Article 83 of the ZKP states that a court decision may not be based on a deposition by the suspect or accused, witness or expert, or on the records, objects, recordings, reports or pieces of evidence, the investigating judge or the judge who carries out individual acts of investigation shall issue *ex officio*, or on the motion of a party, a decision excluding the aforesaid evidence from the files as soon as he establishes that the statements or evidence of such a nature are involved. He shall act in the same manner in respect of the information referred to in the preceding paragraph unless the public prosecutor has already excluded it, as well as in respect of the information disclosed to the police by persons who may not be examined as witnesses (Article 235) or who under this Act have renounced testimony (Article 236) or may not under this Act be appointed as experts (Article 251). The parties may request the exclusion of records and other evidence only until the opening of the main hearing and may request it in the main hearing only if they were not able to do it before.

¹⁵ Article 215 of the Criminal Procedure Code states that a search shall be ordered by the court in the form of a reasoned warrant.

¹⁶ The fourth paragraph of Article 36 of the Constitution states that a search of a dwelling or other premises may only be conducted in the presence of two witnesses.

¹⁷ Article 4 of Criminal Procedure Code/Act states that any arrested person must be advised immediately, in his mother tongue or in a language he understands, of the reasons for his arrest. An arrested person shall immediately be instructed that he is not bound to make any statements, that he is entitled to the legal assistance of a counsel of his own choice and that the competent body is bound to inform upon his request his immediate family of his apprehension.

¹⁸ The tenth paragraph of Article 227 of Criminal Procedure Code states that if the accused was not instructed about his rights under the second paragraph of this Article, or the instruction and the statement of the accused concerning the right to a defence counsel are not entered in the record, or the interrogation was conducted in violation of the provisions of the eighth or ninth paragraph of this Article, the court may not base its decision on the statement of the accused.

¹⁹ Article 5 of the Slovenian Constitution states that in its own territory, the state shall protect human rights and fundamental freedoms.

The prosecution or the court could further invoke the fact that foreign legislation does not require the presence of two witnesses during a search, but that such a requirement is not prescribed by the European Convention on Human Rights (hereinafter: ECtHR)²⁰, either. It is my opinion that the presence of two witnesses during a search of an apartment as required by the Slovene Constitution in Article 36, is not a basic human right. A basic human right is 'the inviolability of one's premises' that is also protected by Article 8 of the ECtHR²¹. The presence of two witnesses during a search only represents a procedural provision or condition that police officers have to consider or meet in order to render their actions legal. The presence of two witnesses as prescribed by Article 36 of the Constitution is only binding upon the Slovene police in the territory of the Republic of Slovenia, whereby the purpose of the presence of witnesses is only aimed at exercising control over the work of the police. This is the so-called procedural dimension of constitutional guarantees, as they can only be exercised in the territory of the Republic of Slovenia. We must not forget that, under strict conditions, the ZKP itself also allows for a house search to be carried out without the presence of two witnesses²², which additionally points to the fact that the 'presence of two witnesses' is not a human right, but merely a provision binding upon the police when performing its acts.

The prosecution and the court could respond to the defence's objection with regard to the jurisdiction of the body ordering the invasion of a human right, that in certain countries, other bodies are authorized to order invasions in human rights and that it is not prescribed in the ECtHR anywhere, which body may order invasions in human rights (e.g. house searches), and that this is not a matter of importance, as long as there is a preliminary or subsequent judicial control over the ordered investigative act. This is also confirmed by the extensive case law of the European Court of Human Rights (hereinafter: ECHR)²³.

The ECHR stated in paragraph 44 of the Judgement in *Harju v. Finland*²⁴ and paragraph 45 of the Judgement in *Heino v. Finland*²⁵ that the absence of a prior judicial warrant may be counterbalanced by the availability of an *ex post factum* judicial review. Judicial review plays an important part in the control or the admission of an invasion of the right to privacy and inviolability of one's premises, however, it is not necessarily the case that judicial review is regulated in the same manner as prescribed in the Slovene Constitution that is binding only upon Slovene bodies with regard to the performance of investigative measures in the Slovene territory. In line with this view, countries decide themselves which body and under which procedure they shall carry out a certain procedural act, however, the legality thereof is also to be verified by the court before or after the procedural act is carried out.

In relation to the note of the legal instruction in the record, the prosecution and the court could argue that the privilege against self-incrimination²⁶ is a constitutional category that is stipulated in item 4 of Article 29 of the Constitution²⁷, however, the note of the legal instruction is indeed a means for the protection of this privilege, which is a statutory category and is prescribed in the tenth paragraph of Article 227 of the ZKP,

²⁰ Ratified in Slovenia with the Act Ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms amended by protocols Nos. 3, 5 and 8, and completed by protocol No. 2 (Official Gazette of the RS – International Agreements (MP), no. 7-41/1994).

²¹ The first paragraph of Article 8 of the ECHR states that everyone has the right for his private and family life, his home and his correspondence, to be respected. The second paragraph states that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law, and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

²² The third paragraph of Article 218 of the ZKP states that a search may be carried out without witnesses being present if their presence cannot be secured immediately and it would be unsafe to delay the act. The reasons for the search without the attendance of witnesses shall be cited in the record.

²³ Cases *Smirnov v. Russia*, *Varga v. Romania*, *Işıldak v. Turkey*, *Kruslin v. France*, *Silver and Others v. the United Kingdom*, *Sorvisto v. Finland*, *Sallinen and Others v. Finland*, *Heino v. Finland* and *Harju v. Finland*.

²⁴ Judgement was on 27 August 2018 accessible on [https://hudoc.echr.coe.int/eng#{"itemid":\["001-103397"\]}](https://hudoc.echr.coe.int/eng#{).

²⁵ Judgement was on 27 August 2018 accessible on [https://hudoc.echr.coe.int/eng#{"itemid":\["001-103394"\]}](https://hudoc.echr.coe.int/eng#{).

²⁶ The essence of this privilege is its voluntary nature.

²⁷ Article 29 of Slovenian Constitution states that anyone charged with a criminal offence must, in addition to absolute equality, be guaranteed the following rights:

- the right to have adequate time and facilities to prepare his defence;
- the right to be present at his trial and to conduct his own defence or to be defended by a legal representative;
- the right to present all evidence to his benefit;
- the right not to incriminate himself or his relatives or those close to him, or to admit guilt.

and that this procedural provision only applies in the territory of Slovenia, which is why it cannot be expected that a procedural standard based on a Slovene act would be stated in a procedure before the bodies of another state that has a different procedural regulation when it comes to notes of instructions.

It is not relevant that the right to remain silent is written; it is, however, important that the suspects were instructed of this right and that they had a choice whether they will testify or defend themselves by remaining silent. The instruction, in which the accused is warned that he is not obligated to testify against himself or that he may exercise his defence by remaining silent, must be such that the accused's decision on whether he will exercise the right to remain silent or not, entirely depends on his free will²⁸.

It is my assessment that the omission of legal instruction on the right to remain silent does not constitute a violation of the ECtHR. Article 6 of the ECtHR prescribes the right to a fair trial²⁹. The third paragraph of Article 6 of the ECtHR prescribes the minimal rights to which a person is entitled, if accused of committing a criminal act. The right to remain silent or the privilege against self-incrimination is not listed among these rights. Despite the fact that the right to remain silent is not expressly included in the ECtHR, the ECHR has considered several cases when individuals complained due to the violation of their right not to incriminate themselves. The main factor that the ECHR considered in these cases was whether it is possible to consider all of the circumstances related to the alleged self-incrimination as repressive.

The ECHR determined that such repressive circumstances exist when an employee of a company is forced to give statements or information on company activities to official bodies that investigate potential irregularities, whereby such obtained data are stated in a subsequent criminal procedure against such an employee (cases of *Saunders v. United Kingdom* (1996))³⁰ and *I.J.L. and others v. United Kingdom* (2000))³¹. The ECHR made the same determination when a French citizen was fined because he refused to submit bank statements and legal deeds with regard to which the customs officials presumed they existed, but were not able to find during a legal search of premises (case of *Funke v. France* (1993))³².

In the case of *Jalloh v. Germany* (2006)³³, where police officers forced the appellant to vomit a bag of cocaine that he had swallowed before the eyes of the police, the ECHR held that forcing a person to vomit and using the vomited bag of cocaine as the key evidence supporting the appellant's conviction, was a violation of the appellant's right to a fair trial and his privilege against self-incrimination. This case involved a repressive, excessive invasion to the body that represented inhumane and degrading conduct, carried out for the acquisition of the evidence that was the basis for the decision.

The ECHR established a violation of Article 6 of the ECtHR in several cases related to police

²⁸ The decision by the Slovene Constitutional Court Up-134/97 of 14 March 2002, that was accessible on 24 August 2018 on the official link of the Slovene Constitutional Court on the webpage: <http://odlocitve.us-rs.si/sl/odlocitev/US21295>.

²⁹ The right to a fair trial:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and the public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Anyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Anyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not the means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

³⁰ Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-58009>, accessible on 21 September 2018.

³¹ Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-58800>, accessible on 21 September 2018.

³² Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-57809>, accessible on 21 September 2018.

³³ Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-76307>, accessible on 21 September 2018.

interrogations, namely, in instances when the self-incriminating statements were used in a trial as essential ones, whereby the appellant gave these statements to the police while he was in solitary confinement undergoing cruel detention and without access to an attorney (case of *Magee v. United Kingdom (2000)*)³⁴. Or in the case where individuals were sentenced because they refused to answer the questions asked by the police (case of *Heaney and McGuinness v. Ireland (2000)*)³⁵. The ECHR also established a violation of Article 6 of the ECtHR in the case of *Averill v. United Kingdom (2000)*³⁶, where the police gave disputable or vague advice on the scope of the right to remain silent while the person did not have access to legal representation.

In all these cases the suspects were, more or less, actually psychologically or physically forced to incriminate themselves in some way, and in some cases, they also did not have access to adequate legal assistance. The acquisition of such statements is undoubtedly a violation of Article 6 of the ECtHR. In particular, the right to remain silent presumes that it is up to the prosecution to prove the charges and that it does not resort to methods of repression or oppression to obtain evidence, thus acting contrary to the will of the accused (case of *Saunders v. United Kingdom, Heaney and McGuinness v. Ireland, J.B. v. Switzerland (2001)*)³⁷ and *Allan v. United Kingdom (2002)*)³⁸. Given the case law of the ECHR, the consideration of whether Article 6 of the ECtHR was violated, requires that the 'degree of force' aimed at the acquisition of a statement of a suspect as well as access to legal representation is taken into account.

The prosecution and the court must determine by way of examining the interrogation records³⁹ and by posing additional questions to the suspects⁴⁰, i.e. accused⁴¹ at the main hearing as to whether there was any degree of force present at the interrogation of the suspects, i.e. whether there was any indirect or direct force or any physical or psychological violence, and whether the suspect voluntarily decided to submit their defence and whether they understood the meaning of their rights. Investigators must allow for the suspects undergoing interrogation to be passive and that they decide by themselves, consciously, rationally and above all, voluntarily, whether they will give statements or not.

Even if an individual procedural act is not carried out abroad in the manner prescribed by the domestic law, it does not mean that such evidence must be excluded from the brief; on the contrary, I believe that such evidence may be used in a domestic procedure, however, the court must first establish that such evidence was not obtained in violation of a constitutionally or internationally legally determined human right and fundamental freedom⁴². If that were the case, it would have to be excluded from the court brief.

The main purpose of evidence exclusion is surely the prevention of illegal searches and seizures. Under Slovene legislation, the decision on the exclusion of evidence is aimed at teaching the police a lesson with regard to its future conduct, which means the strict consideration of constitutional and statutory rights. However, a Slovenian decision on the exclusion of evidence is not to be used as a lesson directed at foreign

³⁴ Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-58837>, accessible on 21 September 2018.

³⁵ Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-59097>, accessible on 21 September 2018.

³⁶ Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-58836>, accessible on 21 September 2018.

³⁷ Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-59449>, accessible on 21 September 2018.

³⁸ Summarized from the webpage: <http://hudoc.echr.coe.int/eng?i=001-60713>, accessible on 21 September 2018.

³⁹ The records must show that the suspects were instructed on their status in the pre-trial procedure (that they are suspects to a criminal act, which act, that they have a right to an attorney and other rights that are laid down by the domestic legislation); who held jurisdiction at the interrogation (presence of an attorney); duration of the interrogation (whether there was a recess, time for lunch); whether the records was signed by the suspect (and attorney); whether the suspect (and/or attorney) made any comments on the record; it is advisable to write records as per the question/response system, as this is the only way to check the manner of interrogation as well as the nature of the questions, i.e. whether they were of a suggestive or captious nature.

⁴⁰ According to Article 144 of the ZKP, the suspect is a person against whom the competent government agency undertook, before the introduction of criminal proceedings, a specific act or measure because grounds existed to suspect that he had committed, or participated in the commission of, a criminal offence.

⁴¹ According to Article 144 of the ZKP the defendant is the person against whom the charge sheet has become final.

⁴² Equality before the law, prohibition of torture, protection of personal liberty, orders for and duration of detention, protection of human personality and dignity, equal protection of rights, right to judicial protection, public nature of court proceedings, right to compensation, presumption of innocence, principle of legality in criminal law, legal guarantees in criminal proceedings, right to rehabilitation and compensation, prohibition of double jeopardy, freedom of movement, right to private property and inheritance, right to personal dignity and safety, protection of right to privacy and personality rights, inviolability of dwellings, protection of the privacy of correspondence and other means of communication, protection of personal data, right to use one's language and script.

police that complied with these regulations during its work. Only their competent bodies may teach them such a lesson. It would be downright absurd, if Slovene bodies were to give lessons on compliance with Slovene regulations to foreign competent bodies when the latter independently act in their territory and in accordance with their own regulations.

B. Acquisition of Evidence by Way of Requests or a European Investigation Order

If Slovene bodies acquire evidence from third countries, they must prepare a request for international legal assistance that is usually conveyed through the Ministry of Justice to the competent bodies in these countries⁴³. However, if they acquire evidence⁴⁴ from another Member State of the European Union on the basis of the Cooperation in Criminal Matters with the Member States of the European Union Act (hereinafter: ZSKDČEU-1B)⁴⁵, which implemented the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters⁴⁶ in the Slovene legal order, whereby they have been obtaining evidence as of 5 May 2018 by way of a European investigation order⁴⁷. They may submit this order directly to the competent body of a Member State and it does not have to be submitted through the Ministry of Justice which contributes to its speedier execution.

On the basis of Article 34 of the Directive of 22 May 2017, when the implementation deadline has lapsed, the Directive shall replace the respective provisions⁴⁸ of the following conventions that apply in relations between the Member States of the EU in which the Directive is binding:

- i. European Convention on Mutual Assistance in Criminal Matters of the Council of Europe of 20 April 1959 and two additional Protocols to this Convention and bilateral agreements that were concluded based on Article 26 of the aforementioned Convention;⁴⁹
- ii. Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2) and Protocols (3) to this Convention⁵⁰ and
- iii. Convention Implementing the Schengen Agreement⁵¹.

In addition to the ZSKDČEU-1B, the Slovene bodies have also been obtaining evidence until 5 May 2018

⁴³ In cases of bilateral agreements or agreements between individual states, they may also be submitted directly (e.g.: Agreement on Legal Assistance in Civil and Criminal Matters of 14 April 2011 (Official Gazette of the RS - MP, no. 13/2015 and 16/2015) entered into by the Republic of Slovenia and the Republic of Serbia).

⁴⁴ Such as obtaining information or evidence which is already in the possession of the executing authority; obtaining information contained in databases held by police or judicial authorities; hearing of a witness, expert, suspected or accused person, victim, third party; identification of persons holding a subscription of a specified phone number or IP address; temporary transfer of a person held in custody to the issuing State; temporary transfer of a person held in custody to the executing State; hearing by videoconference or other audiovisual transmission of a witness, expert or suspected or accused person; hearing by telephone conference of a witness or expert; information on bank and other financial accounts, information on banking and other financial operations; investigative measure implying the gathering of evidence in real time, continuously and over a certain period of time; monitoring of banking or other financial operations; controlled deliveries; covert investigations; interception of telecommunications and other provisional measure(s) to prevent the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence.

⁴⁵ Official Gazette of the Republic of Slovenia, no. 48/2013, 37/2015, 22/2018.

⁴⁶ Directive 2014/41/EU of the European parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (Official Journal of the European Union no. L 130/1 of 1 May 2014).

⁴⁷ A European investigation order is a judicial decision which has been issued or validated by a judicial authority of a Member State ('the issuing State') to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') to obtain evidence.

⁴⁸ A non-binding interpretation of the term 'respective provisions' of the Conventions replaced by the Directive was adopted in the scope of Eurojust and the European judicial network, and therewith the types of measures that are not included in the area of application of the European investigation order and regarding which the aforesated Conventions continue to apply. One of such measures is the service of procedural documents, joint investigation teams, spontaneous exchange of information, abandonment and assumption of law enforcement, return of items to their lawful owner, seizure and recovery of assets, exchange of information from the criminal records, measures of cooperation between the customs' bodies, etc. (Council doc. No 9936/17 LIMITE: on 18 September 2018 accessible on <http://data.consilium.europa.eu/doc/document/ST-9936-2017-INIT/en/pdf>).

⁴⁹ European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Council of Europe, European Treaty Series - No. 30).

⁵⁰ Official Journal of the European Communities C 197/1 of 12 July 2000.

⁵¹ Official Journal of the European Union no. L 239/19 of 22 September 2000.

based on the European Convention on Mutual Assistance in Criminal Matters⁵² and Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union⁵³. Both Conventions were ratified in Slovenia with a law⁵⁴ and they were both in effect simultaneously.

When obtaining evidence under the European Convention on Mutual Assistance⁵⁵, more emphasis is given on the law of the requested state, while the contrary is true regarding the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union⁵⁶, i.e. more emphasis is given on the law of the requesting state. The European investigation order is recognised and executed in the same manner and under the same conditions as if the investigation measure or act was ordered by the executing state. However, it is possible that the ordering state states which formalities must be met to ensure the admissibility of evidence. The executing body must meet them, unless they are contrary to the fundamental regulations of the executing state⁵⁷.

In the investigation and criminal prosecution of the gravest criminal acts such as terrorism, illicit trafficking in narcotic drugs, trafficking in human beings, counterfeiting (of products, official documents, money), cybercrime, frauds, corruption, crime against the environment and participation in a criminal organisation, the growingly predominant aspect is their international element, as these criminal acts are not executed in one state alone. Due to the more efficient detection and criminal prosecution of this type of criminal acts, action in a single state or the submission of individual European investigation orders and/or requests for international legal assistance is no longer enough and is not efficient. It may be inefficient mainly due to the following reasons:

- i. with requests, the cooperation of foreign bodies is limited only to a specific request or procedural act;
- ii. information and evidence are submitted after the request is executed (loss of time);
- iii. after the receipt of information, a new request must be prepared for each additional measure which can be inefficient in terms of time and costs;
- iv. participation is limited to the competent bodies of the executing state;⁵⁸
- v. limited participation of the competent bodies of the ordering state;⁵⁹
- vi. in principle, the investigation does not commence in the executing state.

To ensure the greatest degree of efficiency when fighting international crime, it is necessary to ensure an unlimited and simultaneous exchange of information and evidence between the representatives of foreign bodies that are equal and active in the investigation and criminal prosecution of the gravest criminal acts both at home as well as abroad. This, however, can only be achieved with their close cooperation which is provided with the formation and operation of joint investigation teams.

C. Acquisition of Evidence by Way of International Cooperation in Joint Investigation Teams

It is typical for joint investigation teams that they represent cooperation between foreign competent

⁵² European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Council of Europe, European Treaty Series - No. 30).

⁵³ Official Journal of the European Communities C 197/1 of 12 July 2000.

⁵⁴ Act ratifying the European Convention on Mutual Assistance in Criminal Matters and Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Official Gazette of the Republic of Slovenia, no. 25/1999) and the Act ratifying the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, established by the Council in accordance with Article 34 of the Treaty on European Union (Official Gazette of the Republic of Slovenia - International Agreements no. 7/2005).

⁵⁵ Article 3 of European Convention on Mutual Assistance in Criminal Matters states: 'The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for procuring evidence or transmitting articles to be produced in evidence, records or documents.'

⁵⁶ Article 4 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union states: 'Where mutual assistance is afforded, the requested Member State shall comply with the formalities and procedures expressly indicated by the requesting Member State, unless otherwise provided in this Convention and provided that such formalities and procedures are not contrary to the fundamental principles of law in the requested Member State.'

⁵⁷ Article 9 of Directive 2014/41/EU of the European parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

⁵⁸ It is the state whose competent body executes a decision or measure for another state.

⁵⁹ It is the state whose competent body issued the decision or measure to be executed in another state.

bodies in the investigation and criminal prosecution of criminal acts containing an international element based on a time-limited agreement. The agreement is concluded on the initiative of a competent body of the domestic or foreign state. This means that the precondition for the conclusion of the agreement is an already commenced pre-trial procedure in the state that usually initiates the conclusion of the agreement. This is so because the investigative bodies in this state already possess certain evidence and require additional evidence or information from other countries to bring the matter to a successful conclusion.

A joint investigation team can have one or more leaders, depending on the number of participating countries. The practice of establishing joint investigation teams is going in the direction where each participating state designates its leader. In the meantime, the investigation and criminal prosecution may be carried out in one or several or all participating states. It is also possible that some states conclude an agreement on the establishment of a joint investigation team in the investigation and criminal prosecution, while the others participate through international legal assistance, or accede to the agreement at a later stage.

The definition and terms for the establishment of a joint investigation team, its composition, time and geographical aspect of operations, its purpose and manner of operations as well as organization is regulated by several bilateral⁶⁰ and international⁶¹ documents as well as Practical instructions for joint investigation teams prepared by the Secretariat of the Network for joint investigation teams in cooperation with Eurojust, Europol and OLAF⁶². These Practical instructions also include a template agreement on the establishment of a joint investigation team⁶³.

The Member States of the European Union must notify their national representatives at Eurojust⁶⁴ about the establishment of a joint investigation team and the results of its work⁶⁵. A mere notification by Member States could not in any way contribute to the efficiency of joint investigation teams as the cooperation of national members in their activities and in the establishment as well⁶⁶. In any case, the support of national members and the Secretariat of the Network of joint investigation teams that are part of the Eurojust⁶⁷ personnel, is of key importance when it comes to the preparation of the agreement on the establishment of a joint investigation team, as Eurojust promotes the template agreement in which all the relevant articles are already included that may later on be subject of discussions and negotiations among the signatories of the agreement. It should not be overlooked that regarding the latter, the Secretariat of the Network of joint investigation teams is always available with its specific knowledge and extensive experience. When the parties agree on the agreement content, Eurojust also provides the agreement translations. However, the role of Eurojust does not end only in the adoption of the agreement on the establishment of a joint investigation team or in relation to changes to the agreement content; it can also continue in the very investigation and criminal prosecution, as the competent bodies often require legal advice in the criminal prosecution of the

⁶⁰ Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto and Agreement on Mutual Legal Assistance between the European Union and the United States of America (Article 5).

⁶¹ Convention on Mutual Assistance in Criminal Matters between the Member States of the EU of 12 July 2000 (Article 13); Council Framework Decision on 13 June 2002 on Joint Investigation Teams (2002/465/JHA); Police Cooperation Convention for South-East Europe ((PCC-SEE) Article 27); Second Additional Protocol to the European Convention on Mutual Legal Assistance (Article 20); United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 9); United Nations Convention against Transnational Organised Crime (Article 19) and United Nations Convention against Corruption (Article 49).

⁶² Issued by the Council of the European Union in Brussels on 14 February 2017 (summarized from the webpage: <http://www.eurojust.europa.eu/doclibrary/JITs/JITs%20framework/JITs%20Practical%20Guide/JIT-GUIDE-2017-EN.pdf>, accessible on 14 August 2018).

⁶³ Official Journal of the European Union C 18, 19 January 2017, p. 1–9.

⁶⁴ On the basis of Article 2 of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (Official Journal L 063 of 6 March 2002) and further strengthened by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime ((Official Journal L 138 of 4 June 2009) hereinafter: Eurojust Decision), this is usually the prosecutor or the judge.

⁶⁵ Article 13 of the Eurojust Decision.

⁶⁶ Article 9f of the Eurojust Decision.

⁶⁷ Article 25a of the Eurojust Decision.

more grave forms of cross-border crime that pertain to a referral of a case, European arrest warrant, European investigation order, and last but not least, also to the answers relating to the settlement of a dispute on jurisdiction. An important factor is also the financing of the operations of joint investigation teams, whereby it is based on anticipated costs of operative activities⁶⁸, which is also provided by Eurojust. Eurojust therefore prepares everything necessary for the signature of an agreement on the establishment of a joint investigation team and finances all the necessary logistics related to its operations which surely saves time and costs for the investigation and law enforcement bodies at their work.

In the Republic of Slovenia, the establishment of joint investigation teams is regulated in the ZSKDČEU-1B, namely, Article 53 regulates the procedure of its establishment and Article 54 regulates the manner of its work. The procedure of the establishment and the operations of the joint investigation team is also regulated in Article 160b⁶⁹ of the ZKP.

However, neither the ZSKDČEU-1B nor the ZKP regulate the issue of obtaining evidence in a joint investigation team, and thereby the admissibility thereof as well, due to which the answer to this question is to be sought in international acts that regulate the operations of a joint investigation team.

1. Application of the Law in Joint Investigation Teams

International criminal law agreements that are relevant for the cooperation between countries in criminal prosecution of the criminal offenders override domestic law, under the condition that such agreements have been ratified and published. The provisions of a ratification act with which an international agreement is included in the internal legal order of a state, have the power of a law both in the formal as well as material sense given *lex lata*. However, with the publication of the ratification act, an international agreement starts to apply directly.

⁶⁸ Reimbursement of the costs of transport and accommodation, interpretation and translation costs as well as the costs of evidence materials' transport and/or seized items' transport costs.

⁶⁹ The Article 160b of the ZKP states: (1) In the case which is the subject to the pre-trial procedure, investigation or court proceedings in one or more countries, the police may cooperate with the police staff of the other country in the territory or outside the territory of the Republic of Slovenia in carrying out tasks and measures in the pre-trial procedure and investigation procedure for which it is responsible according to the provisions of this Act. (2) In carrying out the tasks and measures referred to in the preceding paragraph, the police shall be directed by the public prosecutor pursuant to Article 160.a of this Act and may cooperate with the public prosecutors of the other country in the territory and outside the territory of the Republic of Slovenia in carrying out the stated activity and in exercising other powers in compliance with the provisions of this Act (joint investigation team). (3) The tasks, measures, guidance and other powers referred to in the previous paragraphs of this Article must be carried out in accordance with the agreement on the establishment and operation of joint investigation team in the territory of the Republic of Slovenia or other countries that shall be concluded on a case by case basis by the Public Prosecutor General or under his authorisation by his deputy with the Public Prosecution Office, court, police or other competent authorities of other states as set out in the Council Framework Decision of 13 June 2002 on joint investigation teams (Official Journal of the European Union, No. L 162/1, 20.6.2002) or in the existing international treaty concluded with a country not being a member of the European Union after obtaining the opinion of the Director General of the Police. The agreement shall be concluded on the initiative of the Public Prosecutor General, the Head of the District Public Prosecution Office or the Head of the Group of Public Prosecutors for Special Affairs or on the initiative of the competent authority of another state. (4) The agreement referred to in the previous paragraph shall lay down which authorities are to conclude the agreement, in which case the joint investigation team will act, the purpose of the operation of the team, the Public prosecutor of the Republic of Slovenia who is its Head in the territory of the Republic of Slovenia, other team members and the duration of its operation. The Public Prosecutor General must notify the ministry responsible for justice in writing of any agreement concluded. (5) The police staff, public prosecutors or other competent authorities of other states shall only carry out tasks, measures, guidance and/or other powers referred to in the first and second paragraphs of this Article in the territory of the Republic of Slovenia within the framework of the joint investigation team in compliance with the provisions of the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article. (6) If so provided for in the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article, the representatives of competent authorities of the European Union, such as EUROPOL, EUROJUST and OLAF, may participate in the joint investigation team. The representatives of competent authorities of the European Union shall only exercise their powers in the territory of the Republic of Slovenia within the framework of the joint investigation team in compliance with the provisions of the agreement referred to in the third paragraph of this Article. (7) The police organisation units and Public Prosecution Offices of the Republic of Slovenia are obliged to offer all the necessary assistance to the joint investigation team. (8) Upon the completion of the work done by the joint investigation team, the head of the joint investigation team shall make a report in writing to all its members and the Public Prosecutor General.

Since the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union was also ratified with an appropriate law in Slovenia⁷⁰, this Convention is also directly applicable in Slovenia in the basis of Article 8 of the Constitution⁷¹, which means that Article 13 of the said Convention is also directly applicable, whereby this Article precisely determines under which conditions a JIT may be established, who is in the composition, how and where it operates etc. It is stated in item a) of the third paragraph of Article 13 that the team leader acts in the scope of its competencies as per his national legislation. However, item b) of the third paragraph of Article 13 prescribes that the JIT performs its tasks in accordance with the legislation of the Member State in which it operates. These provisions are therefore directly applicable and in effect in the Republic of Slovenia.

We find the same diction about the operations of the team leader and the performance of team tasks, i.e. that these teams should comply with the national legislation of the Member State in which they operate, in the following:

- items a) and b) of Article 3 of the Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA);
- items a) and b) of Article 5 of the Police Cooperation Convention for Southeast Europe;⁷²
- items a) and b) of the third paragraph of Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters;⁷³
- the fourth paragraph of Article 5 of Agreement on Mutual Legal Assistance between the European Union and the United States of America⁷⁴ that includes a provision that refers to the application of the national law of the state in which the joint investigation team operates.

Item c) of the first paragraph of Article 9 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances⁷⁵ also stipulates that team members may, upon the authorization of appropriate bodies on the territory of which the investigation is to be executed, act on the basis of the authorization and that all parties must ensure the complete consideration of the sovereignty of the party on the territory of which the investigation is being carried out. It may be concluded that this provision, too, refers the operations of the joint investigation team to the application of the national law of the state where the investigation is being carried out.

Article 19 of the United Nations Convention against Transnational Organised Crime⁷⁶ and Article 49 of the United Nations Convention against Corruption⁷⁷ entail an identical text, namely, that the relevant contracting states ensure the complete consideration of the sovereignty of the contracting state on the territory of which the investigation is to be carried out.

⁷⁰ Ratified in Slovenia with the Act ratifying the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Official Gazette of the Republic of Slovenia – International Agreements no. 7/2005 of 18 May 2005).

⁷¹ Article 8 of Slovenian Constitution states that laws and regulations must comply with the generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.

⁷² Ratified in Slovenia with the Ratification of the Police Cooperation Convention for Southeast Europe Act (Official Gazette of the RS no. 108/2012 of 29 December 2012).

⁷³ Ratified in Slovenia with the Ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters Act (Official Gazette of the RS no.92/2012 of 6 December 2012)

⁷⁴ Ratified in Slovenia with the Ratification of the Agreement on Mutual Legal Assistance between the European Union and the United States of America Act (Official Gazette of the RS no. 121/2005 of 30 December 2005 – International Agreements, no. 22/05).

⁷⁵ Ratified in SFRJ with the Ratification on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (Official Gazette of the SFRJ no. 14 of 23 November 1990).

⁷⁶ Ratified in Slovenia with the Ratification on the United Nations Convention against Transnational Organised Crime Act (Official Gazette of the RS no. 41/2004 of 22 April 2004).

⁷⁷ Ratified in Slovenia with the Ratification on the United Nations Convention against Corruption Act (Official Gazette of the RS no. 5/2008 of 4 March 2008).

Given the international acts, I can state that joint investigation teams must, when acquiring evidence in the territory of a team Member State where it collects evidence, comply with its national legislation and collect evidence in line with the procedures that apply in this state. This means that if a joint investigation team is operating and collecting evidence in the territory of three states, it must comply with three different sets of legislation. However, this does not mean that the evidence that was obtained in the scope of a joint investigation team in different states is also automatically admissible for an evidentiary procedure in another state. On the contrary. Its admissibility should always be diligently considered especially in the light of the standards of the national legal order and the European Convention on Human Rights⁷⁸ and the Universal Declaration of Human Rights⁷⁹.

II. CONSIDERATION OF EVIDENCE CONTENT BY SLOVENE COURTS

As stated at the outset, the court must, when considering whether evidence was collected in accordance with the national law of the country where such evidence was collected, also consider whether such acts materially comply with the standards of the Constitution of the Republic of Slovenia. This means that the court further considers two more sets of questions, namely: 1. the evidentiary basis for consideration at the moment when procedural acts by foreign investigators are ordered, and 2. whether the evidentiary basis meets the standards that, in accordance with the Slovene ZKP, allow this type of invasion in basic human rights. Such an opinion was also adopted by the Slovene case law⁸⁰.

A Slovene court must check the evidentiary basis that was handled by foreign bodies before they carry out individual procedural acts. Evidentiary basis may be acquired (bank) documentation, hearing of witnesses and data obtained with special methods and means, such as telephone tapping and following. If such an evidentiary basis meets the Slovene evidence standards (i.e. justified grounds for suspicion and reasons for suspicion), and the same procedural acts would have been ordered on the evidentiary basis, then the procedural acts by the foreign bodies were materially compliant with the standards of the Constitution of the Republic of Slovenia and such evidence is also admissible on the same grounds in a Slovene procedure.

III. CONCLUSION

When acquiring evidence from abroad, their admissibility before the court must be verified. This means that both the law enforcement bodies and prosecution services as well as the courts must, along the legality of the acquisition of the evidence obtained abroad, also consider whether such evidence was obtained in violation of a constitutionally or internationally legally determined human right and fundamental freedom. If evidence obtained abroad was obtained illegally, it must be excluded from the brief. The mere fact that evidence obtained abroad was obtained under a different procedure than in the state in which the court will use it for an evidentiary procedure does not necessarily mean that such evidence is automatically inadmissible.

Evidence obtained abroad that was obtained independently of a request or participation of another state must be obtained legally in such a state, whereby it is valid also in a criminal procedure being held in another state, even though it was not obtained in a manner prescribed in this other state where it will be used.

If evidence was obtained abroad illegally or in violation of basic human rights, then such evidence is undoubtedly inadmissible and must be excluded from the brief with which we prevent illegal investigations and seizures and prioritize the respect of human rights and not the establishment of truth and the efficiency of criminal procedure.

Given the fact that the acquisition of evidence from abroad through requests may be inefficient in terms of time and costs, the objective of an efficient fight against international crime calls for employing other instruments of international cooperation as well. One of the more efficient instruments of gathering evidence is undoubtedly through the formation and operation of joint investigation teams. They can operate and obtain

⁷⁸ Ratified in Slovenia with the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms Act amended by protocols Nos. 3, 5 and 8, and completed by protocol No. 2 (Official Gazette of the RS-MP, no. 7-41/1994).

⁷⁹ United Nations General Assembly Resolution 217A on 10 October 1948.

⁸⁰ Judgement by the Supreme Court of the Republic of Slovenia ref. no. XI Ips 44415/2010 of 22 June 2010.

evidence in the territory of one participating state or in the territory of several participating states. A joint investigation team undoubtedly saves on time and costs that would have otherwise been spent for writing and translating time-consuming requests; operating through investigative bodies is not only limited to one or two investigating acts – investigative bodies can actually carry out several investigative acts simultaneously and work actively both at home as well as abroad; they can receive evidence and information immediately; direct communication is established with foreign bodies; most importantly, the collection of evidence is subject to the law of the state in which the joint investigation team operates, with which errors in the legality of evidence collection and consequently, the possibility of their exclusion in another state, are decreased.

However, in the establishment and provision of the financial means for the operation of joint investigation teams, and consequently also in the admissibility of evidence before the courts, we must not overlook the efficient assistance provided by Eurojust as shown by the numbers as well, as the number of newly-established joint investigation teams whose operations were financially supported by Eurojust is growing every year⁸¹.

It can in no way be expected that a joint investigation team is a ‘magic wand’ and that all investigation, evidentiary, legal, financial, logistic, technical, translation and other problems will be solved simply with the conclusion of an agreement on the establishment of a joint investigation team. However, it may be expected that these problems will be resolved more easily with the close cooperation and a speedy decision on the country in which a criminal procedure will be held and against whom⁸² it will be brought.

⁸¹ Summarized from the webpage: <http://www.eurojust.europa.eu/doclibrary/corporate/Pages/annual-reports.aspx>, accessible on 24 September 2018.

⁸² I propose for the sake of an easier execution of a procedure, especially from the aspect of the protection of the rights of the accused and economy of the procedure, that in principle, each state participating in the team, shall perform the criminal prosecution of its own citizens unless other state is in a better position to prosecute.