



Strasbourg, 13 February 2020

PC-OCMod(2019)05BILREV

[PC-OC/PC-OC Mod/Docs PC-OC Mod 2019/ PC-OC Mod (2019)05BIL]
<http://www.coe.int/tcj>

**EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)**

**COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
(PC-OC)**

**COMPILATION OF THE REPLIES
TO THE QUESTIONNAIRE ON THE APPLICATION OF ARTICLES 13 AND 22
OF THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

**COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)**

**COMITÉ D'EXPERTS
SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPÉENNES
SUR LA COOPÉRATION DANS LE DOMAINE PÉNAL (PC-OC)**

**COMPILATION DES RÉPONSES
SUR L'APPLICATION DES ARTICLES 13 ET 22
DE LA CONVENTION EUROPÉENNE D'ENTRAIDE JUDICIAIRE EN MATIÈRE PÉNALE**

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Introduction

At the PC-OC's 75th plenary meeting in November 2018, under the chairmanship of Mr Erik Verbert, it was agreed that there was a need to obtain further information concerning national practices in terms of application of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (the "Convention"), in particular Article 13 relating to requests for extracts from judicial records and Article 22 relating to the transmission of notifications of convictions.

Preliminary information

European Union member states send one another notifications of convictions of their nationals and requests for extracts from judicial records through the European Criminal Records Information System (ECRIS). This questionnaire therefore only concerns the transmission of notifications of convictions and requests for extracts from judicial records outside ECRIS, under the Convention.

Introduction

A l'occasion de la 75^e réunion plénière du PC-OC de novembre 2018, sous la présidence de M. Erik Verbert, il est apparu nécessaire d'obtenir davantage d'informations sur les pratiques nationales s'agissant de l'application de la Convention européenne d'entraide judiciaire en matière pénale du 20 avril 1959 (la « Convention »), et plus particulièrement de son article 13 relatif aux demandes d'extraits de casier judiciaire, et de son article 22 relatif à l'envoi d'avis de condamnation.

Information préliminaire

Les Etats-membres de l'Union européenne assurent, entre eux, la transmission des avis de condamnation de leurs ressortissants et les demandes d'obtention des bulletins des casiers judiciaires par le biais du système européen d'information des casiers judiciaires (ECRIS). Ce questionnaire ne concerne donc que les transmissions d'avis de condamnation et les demandes de bulletins en dehors d'ECRIS, dans le cadre de la Convention.

1. AUSTRIA / AUTRICHE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

In Austria, the term „judicial records” as referred to in Articles 13 and 22 of the Convention is stipulated as **“extract of the criminal record”** in § 9 Criminal Records Act (“Strafregistergesetz”) and includes data according to § 2 para. 1 subpara. 1 to 6 Criminal Records Act (see answer to question 2).

2. Which data is contained in your national judicial records?

Data according to § 2 para. 1 subpara. 1 to 6 Criminal Records Act **means**

1. all final sentences by domestic criminal courts, as well as decisions by foreign criminal courts taken on the basis of such convictions in the context of taking over monitoring or enforcement;
2. all final sentences of Austrian citizens and such persons who have their domicile or habitual residence in Austria, by foreign criminal courts as well as decisions by domestic criminal courts taken on the basis of such convictions in the context of taking over monitoring or enforcement;
3. all final sentences by foreign criminal courts, information about which contractual states of the International Treaty of 4 May 1910, Imperial Legal Gazette No. 116/1912 for Combating the Dissemination of Obscene Publications, of the International Convention for the Suppression of Counterfeiting Currency of 20 April 1929, Federal Legal Gazette. No. 347/1931, of the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs of 13 July 1931, Federal Legal Gazette No. 198/1934 II, and of International Convention for the Suppression of the Traffic in Women of the Full Age of 11 October 1933, Federal Legal Gazette No. 317/1936, have undertaken to mutually exchange;
4. all decisions by the Federal President or by domestic courts related to one of the sentences mentioned in subparagraphs 1 to 3 about
 - a) subsequently fixing punishment;
 - b) subsequently appointing a probation officer or cancelling probation services;
 - c) pardoning a convicted person, alleviating, altering or reassessing a punishment;
 - d) prolonging the probation term;
 - e) revoking a conditional punishment or a conditional preventive measure involving deprivation of liberty;
 - f) finally cancelling a punishment or a preventive measure involving deprivation of liberty;
 - g) abstaining from executing a prison sentence;
 - h) conditional release from a prison term, conditional release from a measure or from a preventive measure involving deprivation of liberty, because the danger against which the measure was taken, does not exist anymore (§ 24, paragraph 2 Criminal Code, § 157, paragraph 2 Correction Services Act);
 - i) cancelling a conditional release from a prison sentence or the conditional release from a preventive measure;
 - j) final release;
 - k) cancelling or altering a judgment or a subsequent decision;
 - l) finally abstaining from passing sentence;

- m) deleting a conviction;
 - n) preliminarily abstaining from executing a sentence (§ 133a, paragraph 1 and paragraph 2 Correction Services Act) and executing a residual sentence (§ 133a, paragraph 5 Correction Services Act);
5. all information relative to sentences mentioned in one of the subparagraphs 1 to 3, about when all prison sentences, fines (fines compensating forfeiture or as value replacement) and all preventive measures involving deprivation of liberty have been executed, are considered to be executed, have been abstained from, or must no longer be executed;
 6. all decisions, dispositions and notifications by foreign authorities relative to convictions by foreign criminal courts included in the Criminal Record, which correspond to the resolutions, decisions and notifications mentioned in subparagraphs 4 and 5.

The data provided in the national judicial records encompasses:

Personal data:

- Family name(s)
- First name(s)
- Former names/Alias
- Date of birth
- Place of birth
- Nationality
- Parents' First Names
- Place of Residence

Conviction information:

- Deciding Authority/Court
- Conviction File Number
- Decision Date
- Decision Final Date
- Offence Date
- Content of the Decision (applicable legal provisions, national offence title, sanction)

3. What use is made of this data?

According to § 9 Criminal Records Act this data can be submitted to authorities and organizations under certain circumstances. Apart from the cases provided for in other federal acts and in international agreements, the Regional Police Directorate Vienna shall upon request free of charge **provide information from the Criminal Record on the data** included pursuant to § 2, paragraph 1, subparagraph 1 to 6:

1. to all domestic authorities, to stations of the Federal Police, and concerning members of the Austrian armed forces also to military command units,
2. to the authorities of the Member States of the European Union for purposes of security administration, as well as to all foreign authorities, provided there is reciprocity,

2a. to the authorities of a Member State of the European Union for other purposes, provided there is reciprocity,

2b. to all foreign authorities according to the provisions of Chapter V of the General Data Protection Regulation,

3. according to special legal regulations to youth welfare carriers for the purpose of preventing or defending against specific dangers to a specific minor child by a specific person.

Pursuant to § 2, paragraph 2 international agreements, according to which convictions by domestic criminal courts and related decisions by the Federal President and final decisions by domestic criminal courts shall be communicated to foreign states, shall not be affected.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Criminal Records Office (kept by the Police Directorate of Vienna).

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

4 times a year, by post.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

If so, by which means (post, email, etc.)?

by post

What use do you make of these notifications?

Relevant personal and content data is inserted in the judicial records.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention? 9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

Personal data (at least family name, first name, date of birth, place of birth, nationality).
Conviction data (at least deciding authority, decision final date, national offence title, sanction).

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

We receive notifications of convictions only from a small part of States Parties.

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Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Criminal Records Office.

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

1068 requests.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Yes

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

No

According to Austrian law convictions concerning legal persons are not stored in the Criminal Records database.

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Yes

§ 9 para. 1 subpara. 3 Criminal Records Act stipulates that apart from the cases provided for in other federal acts and in international agreements, the Regional Police Directorate Vienna shall upon request free of charge provide information from the Criminal Record on the data included pursuant to § 2, paragraph 1, subparagraph 1 to 6 according to special legal regulations to **youth welfare carriers** for the purpose of preventing or defending against specific dangers to a specific minor child by a specific person.

§ 9a para. 2 Criminal Records Act stipulates that according to special legal provisions, the Regional Police Directorate Vienna shall provide information to **youth welfare carriers, school authorities** as well as to **administrative authorities** and **personnel panels of local authorities in connection with the employment of persons in institutions for caregiving, education or instruction of children and juveniles**, as well as for the purpose of **appraising the aptitude of potential adoptive parents** on convictions listed in § 2, paragraph 1a and on data pursuant to § 2, paragraph 1, subparagraphs 7 and 8 (orders for court monitoring pursuant to § 52a Criminal Code and instructions pursuant to § 51 Criminal Code, given to a person convicted for an offence against sexual integrity and self-determination, as well as enforceable disqualifications from practising an activity pursuant to § 220b Criminal Code, as well as disqualifications from practising an activity on the basis of provisions in other Member States, together with data pursuant to § 3, paragraph 2, subparagraph 1 to 3).

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Date of birth

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

Yes, an English answer can be provided.

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

A few minutes.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

None.

*

2. AZERBAIJAN / AZERBAÏDJAN

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

As far as the legislation of Azerbaijan is concerned the wording “Judicial records” could be interpreted as a note form containing information about criminal convictions, records of which is kept by the Ministry of Interior following the relevant legal Regulations.

2. Which data is contained in your national judicial records?

- Surname;
- First Name;
- Patronymic name;
- Personal Identification number (if available);
- Date of Birth;
- Place and country of birth;
- Nationality;
- Name and Article of criminal act;
- Date of verdict;
- Name of the court which delivered a verdict;
- Type and length (if any) of verdict;
- Note about the appeal verdict (if any).

3. What use is made of this data?

Records of criminal acts are kept by the Ministry of the Interior. The information from the base of judicial records is used by the investigating authorities, specialized anti-corruption prosecutors, judges and human resource services of the public institutions.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Ministry of Justice

1, Inshaatchilar avenue,
Baku, Azerbaijan, AZ1073
tel:+99412 493 54 87
fax:+99412 510 29 40
contact@justice.gov.az;
international@justice.gov.az
web: <http://justice.gov.az>

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

At least once a year by post

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

No

Comments, if any: the legislation does not provide for this possibility

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

If so,

by which means (post, email, etc.)?

by post

what use do you make of these notifications?

Forward to the Ministry of Interior to be used in future if necessary

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

- Name
- Surname,
- Patronymic name,
- Place and country of birth;
- Nationality;
- Date and place of birth,
- Name and Article of criminal act,
- Date of verdict;
- Name of the court which delivered a verdict;
- Type and length (if any) of verdict;
- Note of the appeal verdict (if any).
- copy of verdict (preferably)

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

N/A

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Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Ministry of Justice

1, Inshaatchilar avenue,
Baku, Azerbaijan, AZ1073
tel:+99412 493 54 87
fax:+99412 510 29 40
contact@justice.gov.az;
international@justice.gov.az
web: <http://justice.gov.az>

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

None

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

No requests were made to us

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

No

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Yes

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Patronymic
- Personal Identification number (if available)
- Gender
- Country of birth

- Place of birth
- Date of birth
- Nationality
- Purpose of the request
- Name of the requesting authority

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

We can respond in English

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

Approximately 2-3 months

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

No problems so far

*

3. CZECH REPUBLIC / REPUBLIQUE CHEQUE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

In the legislation of the Czech Republic, the term “judicial records” can be interpreted as the Register of Criminal Records established by the Act No. 269/1994 Coll., on the Register of Criminal Records. It is the register of natural and legal persons, who were lawfully convicted by court in a criminal proceeding, and a register of other facts significant for criminal proceeding specified by law.

2. Which data is contained in your national judicial records?

The Register of Criminal Records consists of following registers:

- a) Register of Conviction;
- b) Register of Conditional Discontinuation of Criminal Prosecution;
- c) Register of Conditional Suspension of Submission of a Motion for Punishment;
- d) Register of Settlement;
- e) Register of Withdrawal from Criminal Prosecution in a criminal proceeding against Juveniles.

The Register of Convictions contains following information about all persons lawfully convicted by the criminal courts of the Czech Republic:

- information about the person (such that the person cannot be confused with another person, i.e. first name, surname, date of birth and birth certificate number, place of birth, state of birth, gender and citizenship);
- information about the ruling of the court concerning the conviction, the sentence and protective measure (i.e. the court which issued the judgment and reference number of the case, date of the ruling, legal classification of the committed offence, all forms of punishment imposed on the convict etc.);
- information about the execution of sentence;
- information about the ruling of the court on conditional suspension of execution of a sentence of imprisonment or conditional release from serving the sentence or conditional abandonment of the rest of the sentence
- information about granting of pardon, involvement in general amnesty and expungement of sentence.

The Register of Conditional Discontinuation of Criminal Prosecution and the Register of Conditional Suspension of Submission of a Motion for Punishment contain following information:

- information about the ruling of the court or the public prosecution office on Conditional Discontinuation of Criminal Prosecution or Conditional Suspension of Submission of a Motion for Punishment (i.e. the court or the public prosecution office which issued the ruling, reference number of the case, date of the ruling, possible legal classification of the alleged offence);
- information about the duration of the probation period and notification that the accused person has proven himself after the probation period

3. What use is made of this data?

Data is used for the purpose of criminal proceedings, civil proceedings, administrative judicial proceedings or administrative proceedings and issuing the certificates of integrity and reliability of the person.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Ministry of Justice of the Czech Republic
Vyšehradská 424/16
128 10 Prague 2 - Nové Město
Czech Republic

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

Once a year, on a CD sent by post.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Comments, if any:

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

**If so, by which means (post, email, etc.)?
What use do you make of these notifications?**

Yes, we receive notifications of convictions from other State Parties via e-mail. If the requirements of the applicable legislation are met, the Ministry of Justice initiates proceeding to insert the data concerning the sentence imposed upon Czech citizen into the Register of Criminal Records.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

Information concerning the convicted person (i. e. first name, surname, date of birth, citizenship) and information concerning the conviction (i.e. the court which issued the judgment and reference number of the case)

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

There are no problems in the current application of Article 22 of the Convention. The Czech Republic does not propose any improvements.

*

Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Ministry of Justice of the Czech Republic
Vyšehradská 424/16
128 10 Prague 2 - Nové Město
Czech Republic

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

None.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

No requests were made to us

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

No

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

No

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Gender
- Country of birth
- Place of birth
- Date of birth
- Nationality
- Purpose of the request

Other:

If the request for a judicial record extract relates to a Czech national, then a birth certificate number is obligatory. If the request relates to a foreigner, then it is recommended to indicate information about the parents (surnames and first names of father and mother).

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

We are able to respond to requests for judicial record extracts in both official languages (English and French).

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

We would respond to a request for judicial record extract no later than in 30 days since the delivery of the request.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

There are no problems in the current application of Article 13 of the Convention. The Czech Republic does not propose any improvements.

*

4. DENMARK / DANEMARK

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

“Judicial records” are interpreted as criminal records.

2. Which data is contained in your national judicial records?

Judicial records contain information of:

- Penal decisions (Date of decision, name of Authority, type of decision, type of verdict, offence, sanction, type of sentence, date of appeal if any, date of parole and probation terms if any)
- any, disqualification and confiscation if any, remark on whether attempt or accomplice if any)
- Criminal charges

3. What use is made of this data?

- Criminal justice
- Internal tool for the police
- Base for issuing criminal record certificates to be used by public authorities or private citizens.
- Criminal statistics

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Rigspolitiet
Politiets Administrative Center
Kriminalregisteret
Enghaven 15, DK-7500 Holstebro
mvjyl-pac-kr@politi.dk

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)? In 2018 we notified the other States Parties

2.741 times. We notify by post every month.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

Currently the Danish authorities have no way of sending or receiving secure electronic mail to other States Parties. If electronic communication are secure and encrypted, we see no problem in receiving/sending such information electronically.

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

If so, by which means (post, email, etc.)? We receive notifications by post. What use do you make of these notifications?

If the subject can be identified, and the records are in accordance with Danish law, the records will be added to the Central Criminal Register

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

Full name, date of birth and place, Penal decisions (Date, Name of Authority, type of decision, offence, sanction, disqualification if any)

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

We do only receive notifications from two States Parties in addition to the member states of the EU. A seamless solution to interchange information electronically would be preferable.

*

Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Outside of EU it is The Director of Public Prosecutions and within EU it is the Police District under which the specific case falls.

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

The Director of Public Prosecutions does not have statistics that enable us to see how many

requests we have received.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

No

If not, could you indicate the reasons?

No requests were made to us. The Director of Public Prosecutions do not have statistics on these specific cases, but should a request be made, we are able to send the relevant information to be used in a criminal case, and would therefore send it, if the request lives up to conditions for mutual legal assistance.

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Yes

Currently the Danish authorities have no way of sending or receiving secure electronic post to other contracting states. If the mails are secure or encrypted, we see no problem with receiving/sending such information electronically.

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Comments or examples: Based on the 1959 convention on mutual legal assistance in criminal matters, the Director of Public Prosecutions can respond to a request regarding criminal matters only. Since the example mentioned in the question would be regarded as a civil matter, we would not be able to respond. We are unaware of the possibility to seek this information through other channels, which concern themselves with civil matters.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Date of birth
- Nationality
- Purpose of the request

- Other: We need enough to be able to identify the person with certainty. Sometimes that might
- be more than the information ticked off.

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

Requests and annexed documents from countries other than Austria, France, the Federal Republic of Germany, Ireland, Norway, Sweden or the United Kingdom must be accompanied by a translation into either Danish or one of the official languages of the Council of Europe.

With

regard to longer documents, the Danish Government reserves the right, in any specific case, to

require a Danish translation or to have one made at the expense of the requesting State.

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

This would depend on the specific case and on the urgency of the request.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

The timeframe might be a problem in certain cases. The ECRIS system is rather fast, but there might be longer response time to a request sent as a part of mutual legal assistance request under the convention.

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5. ESTONIA / ESTONIE

Preliminary questions

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

Extracts from the “judicial records” in the sense of Article 13 could be interpreted as extracts from the electronic database containing all data relevant to the case, including statements and evidence presented by the parties and decisions taken by the judicial authorities. We tend to believe that mere crime registry data would not be adequate to fulfil the data mentioned in the Article. In the Article 22 the same phrase has been used in a wider sense, primarily including but not necessarily confined to crime registry data, inter alia data identifying the convicted person, qualification of the offence, and the punishments and other measures applied.

2. Which data is contained in your national judicial records?

Personal data of a natural person in the crime registry are the following:

- 1) given name and surname;
- 2) personal identification code or date of birth;
- 3) sex;
- 4) citizenship;
- 5) residential address;
- 6) place of birth;
- 7) former name and personal identification code of the person;
- 8) name of the person's parent, if submitted to the database by a foreign state.

In the case of a foreigner or a person without a personal identification code, the following shall be entered in the database:

- 1) his or her date and place of birth;
- 2) the name and number of his or her identity document.

Information about the sentence:

- 1) a conviction in a criminal matter which has entered into force;
- 2) a decision of an extra-judicial body or a court judgment on the imposition of punishment in a misdemeanor matter which has entered into force.
- 3) a resolution of the President of the Republic on the review of an appeal for pardon of a convicted offender;
- 4) a foreign conviction in a criminal matter against an Estonian citizen or an alien who holds a residence permit or right of residence in Estonia which has entered into force, if information concerning his or her punishment has been communicated by a foreign state or if an Estonian court has recognised the judgment of conviction.

3. What use is made of this data?

The data entered in the crime registry are public for a period set by the law. They are used by law enforcement to take into account repeated offences, by other authorities to make background checks, and also by other persons who claim to have a lawful reason for consulting the data. After that period has lapsed it may still be used by authorised entities to fulfil their legal duties, e.g. to exclude a person convicted for certain offences from working with children.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

The law does not specify the authority responsible but according to the Convention it is the duty of the Ministry of Justice. The contact details are
Ministry of Justice – Suur-Ameerika 1, 10122 Tallinn, Estonia; fax +372 6208109, info@just.ee.

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

No

If not, could you indicate the reasons?

Unfortunately, we have not been able to guarantee a working system that would enable to notify other Contracting Parties of the convictions of their nationals in a fair, stable and working manner, also thereby making sure the high data quality. Occasional notifications do not meet the standard we would like to provide.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

Comments, if any:

Electronic and as much as possible, automatized notifications would provide timely, fair and stable data flow.

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes, from few countries.

If so, by which means (post, email, etc.)?

By regular post.

What use do you make of these notifications?

Presented information shall be entered into the register.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

- Personal data:

- given name and surname;
- previous name(s);
- date of birth;
- citizenship;
- Details of the sentence:
- the convicting Member State;
- name of the court;
- date of conviction;
- date on which the decision became final;
- case number;
- act;
- paragraph and section for the offence of which the person was convicted;
- sentence;
- any supplementary penalties, decisions modifying the enforcement of the sentence.

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

Estonian crime registry is an electronic database which contains certain types of data, which is ideally machine readable. In order to receive similar type of data and also provide such data to other Contracting Parties it would be reasonable that the data fields are standardised by the Parties.

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Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Competent authority to the transmission of extracts from judicial records is the Ministry of Justice.

The contact details are – Suur-Ameerika 1, 10122 Tallinn, Estonia; fax +372 6208109, info@just.ee .

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

In 2018 Ministry of Justice received 11 requests.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

If not, could you indicate the reasons?

No requests were made to us

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Yes

Estonia accepts the PDF version of the signed request received electronically to the address info@just.ee .

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Yes

Comments or examples: ...

If relevant data from the crime registry may be obtained by an interested party according to Estonian law and taking into account the treaty obligations deriving from the Convention, it would be also possible to provide such data to other Contracting States, for the same purposes.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Date of birth
- Nationality
- Purpose of the request

Other:

- Previous names
- Personal identification code of Estonia (when issued)

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

Estonia accept requests translated into English.

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

The time limit to execute the request according to the domestic law is 10 working days, but we try to answer as soon as possible, usually within a few working days.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

Member states often send in requests by personal identification codes of member states. It may be irrelevant information and do not help identify person if subject has been issued and entered to the Criminal Record Database an Estonian personal identification code. We need both, foreign and Estonian personal identification code.

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7. FRANCE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

In France, the notion of “judicial records” is the computerised register containing information on convictions (understood as final decisions handed down by criminal courts) registered in accordance with French law.

2. Which data is contained in your national judicial records?

The computer application of the National Criminal Register (“*Casier judiciaire national*”) contains several types of data:

- identity data (surname, first name, date and place of birth, sex, nationality);
- data relating to the conviction (court, nature of the decision, situation with regard to detention, penalty imposed, wording of the offence, date of offence);
- data relating to the enforcement of the sentence.

3. What use is made of this data?

The recorded data may be included in criminal record extracts issued by the National Criminal Register (“*Casier judiciaire national*”) (bulletin no. 1 issued to a court for a purpose related to criminal proceedings, bulletin no. 2 transmitted to an administration for an administrative purpose, bulletin no. 3 issued to the person concerned).

In addition, this data may also appear in notifications of convictions sent to a State with which France is bound by an international convention, in the case of convictions handed down by French courts against nationals of that State. These notifications of convictions are not the convictions in themselves, which the French National Criminal Register does not hold, but summaries of the main elements of these convictions.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

The competent authority is the “*Casier judiciaire national*” (Ministry of Justice / Directorate of Criminal Affairs and Pardons).

Its postal address is as follows: Casier judiciaire national - Pôle des échanges internationaux - TSA 37932 - 44379 Nantes Cedex 3 - France.

The contact email address is: cjn-bull-international@justice.gouv.fr.

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

Monthly, by post

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

Comments, if any: Yes, however, this will require prior contact with the competent authority of the country concerned in order to address IT security issues.

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

Yes, but in a very limited way. Only Switzerland and more rarely Monaco and Norway send us these. The other Member States of the European Union, with the exception of Malta and Portugal, communicate on another legal basis within the framework of the ECRIS system (European Criminal Records Information System).

If so,

by which means (post, email, etc.)? By post

what use do you make of these notifications?

Once recorded in the French criminal record, the information received may appear in the criminal record extracts issued by the National Criminal Register ("*Casier judiciaire national*"). The information received allows French criminal courts to be informed of the existence of convictions handed down against French nationals in other countries which are signatories to the Convention. They cannot have legal effects: for example, one cannot retain the state of recidivism on the basis of one of these convictions. Similarly, the sanctions contained therein cannot be enforced by the State of nationality solely on the basis of these notifications of convictions.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

At a minimum, it is necessary to have the following information:

- surname;
- first name;
- date of birth;
- place of birth;
- convicting court;
- date of the judgement;
- wording of the offence;
- date of the offence;
- sanctions imposed.

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

France receives only a few notifications of convictions under Article 22 of the Convention (sent mainly by Switzerland, Monaco and Norway).

Countries wishing to apply this article should designate a referent service with a functional e-mail address to allow direct exchanges between services, to improve the flow of information addressed on the basis of Article 22. The establishment of a targeted working group on this issue and that of Article 13 should be considered within the Council of Europe (perhaps in the context of the PC-OC Mod).

By way of comparison, ECRIS, the system which currently interconnects the EU Member States and allows for the exchange of thousands of conviction notices each month, could only be set up after the initiative of Germany, Belgium, Spain and France to create an interconnection of criminal records on the basis of discussions held in the criminal records services. It emerged that in order to be effective and interesting (for judicial authorities in particular), the exchange of information at the level of criminal records should be simple and not unnecessarily increase the burden on the convicting State. This is what the working group should be working towards.

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Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

The competent authority is the “*Casier judiciaire national*” (Ministry of Justice / Directorate of Criminal Affairs and Pardons).

Its postal address is as follows: Casier judiciaire national - Pôle des échanges internationaux - TSA 37932 - 44379 Nantes Cedex 3 - France.

The contact email address is: cjn-bull-international@justice.gouv.fr.

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

During 2018, the National Criminal Record received approximately 6,000 requests for criminal records extracts pursuant to article 13 (Switzerland, Monaco, Liechtenstein, Norway).

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Yes, but this requires prior contact with the relevant department in the requesting State to discuss IT security issues.

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

Comments:

France has a criminal record containing criminal convictions handed down by its courts against legal persons and would therefore be able to respond to requests for criminal records extracts regarding legal persons. It might be appropriate to refer the matter to the Council of Europe's Legal Department so that the question relating to the applicability of Article 13 of the Convention to legal persons be raised, since such exchanges can only be conceived in the context of reciprocity.

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Yes

Comments or examples: ...

The following list of examples is not exhaustive:

- request for employment involving contact with children,
- request for a change of nationality,
- request for employment in the public sector,
- request for employment in the security sector (private sector)

- the Department of International Exchanges ("*Pôle des échanges internationaux*") of the National Criminal Register ("*Casier judiciaire national*") is able to respond to the requesting State if the purpose of the request is admissible under domestic law, in cases where this basis is not linked to criminal proceedings.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Gender
- Country of birth
- Place of birth (obligatory if the country of birth is France)
- Date of birth
- Purpose of the request

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

Yes

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

The estimated timeframes are as follows:

- approximately 10 days from the date of receipt of the application by the National Criminal Register ("*Casier judiciaire national*") for a request related to criminal proceedings or for administrative purposes;
- approximately 20 days from the date of receipt of the application by the National Criminal Register ("*Casier judiciaire national*") for an application made at the request of an individual.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

In order to be able to send requests to all States signatories to the Convention, France would like to have an exhaustive list of the contact details of their services which can respond to such requests and, if possible, a functional e-mail address to initiate contacts (in English or French). Some States have apparently not yet provided contact details for distribution in the Secretariat's "List of competent authorities for the application of Articles 13 and 15, paragraph 3, of the European Convention on Mutual Assistance in Criminal Matters (ETS 030)".

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FR

1. Comment interprétez-vous la notion de « casier judiciaire », telle que mentionnée aux articles 13 et 22 de la Convention, dans votre juridiction ?

En France, le « casier judiciaire » constitue le registre informatisé regroupant des informations relatives aux condamnations (entendues comme des décisions définitives prononcées par des juridictions pénales) enregistrées conformément au droit français.

2. Quelles sont les données contenues dans vos casiers judiciaires nationaux ?

L'application informatique du Casier judiciaire national contient plusieurs types de données :

- données d'identité (nom, prénom, date et lieu de naissance, sexe, nationalité) ;
- données relatives à la condamnation (juridiction, nature de la décision, situation au regard de la détention, sanction prononcée, libellé de l'infraction, date d'infraction) ;
- données relatives à l'exécution de la peine.

3. Quelle est l'utilisation faite de ces données ?

Les données enregistrées sont susceptibles de figurer dans les extraits de casier judiciaire délivrés par le Casier judiciaire national (bulletin n°1 délivré à une juridiction pour un motif lié à une procédure pénale, bulletin n°2 transmis à une administration pour un motif administratif, bulletin n°3 délivré à la personne concernée).

Par ailleurs, ces données sont également susceptibles de figurer dans des avis de condamnation adressés à un Etat avec lequel la France est liée par une convention

internationale s'agissant de condamnations prononcées par des juridictions françaises à l'encontre de ressortissants de cet Etat. Ces avis de condamnation ne sont pas les condamnations en elles-mêmes que le Casier judiciaire national français ne détient pas, mais des résumés des principaux éléments desdites condamnations.

Article 22

4. Quelle est l'autorité compétente dans votre système national pour appliquer cet article relatif aux échanges automatiques d'avis de condamnation entre Etats-parties et quelles sont ses coordonnées?

L'autorité compétente est le Casier judiciaire national (Ministère de la Justice / Direction des affaires criminelles et des grâces)

Ses coordonnées postales sont les suivantes : Casier judiciaire national - Pôle des échanges internationaux - TSA 37932 - 44379 Nantes Cedex 3 - France

L'adresse courriel de contact est : cjn-bull-international@justice.gouv.fr

5. Votre Etat adresse-t-il des avis de condamnation aux autres Etats parties en application de l'article 22 de la Convention ?

Oui

Si oui : à quelle fréquence sont-ils transmis et par quel moyen (postal, électronique...) ?
Fréquence mensuelle par voie postale

6. Pourriez-vous envisager, si ce n'est pas déjà le cas, d'envoyer et/ou de recevoir de tels avis de condamnation par voie électronique ?

Oui. Cela impliquera toutefois que des contacts préalables soient pris avec l'autorité compétente du pays concerné afin de traiter les questions relatives à la sécurité informatique.

7. Votre Etat reçoit-il des avis de condamnation d'autres Etats Parties en vertu de l'article 22 de la Convention ?

Oui, mais de manière très limitée. Seule la Suisse et plus rarement Monaco et la Norvège nous en adressent. Les autres pays membres de l'Union européenne, à l'exception de Malte et du Portugal, communiquent sur un autre fondement juridique dans le cadre du système ECRIS (système européen d'information des casiers judiciaires).

Si c'est le cas,

Par quelle voie (postale, électronique etc.) ? Par voie postale

Quel usage faites-vous de ces avis ?

Une fois enregistrées au casier judiciaire français, les informations reçues sont susceptibles de figurer dans les extraits de casier judiciaire délivrés par le Casier judiciaire national. Ces données permettent aux juridictions pénales françaises d'être informées de l'existence de condamnations prononcées contre des nationaux français dans les autres pays signataires de la Convention. Elles ne peuvent avoir d'effets juridiques : on ne peut ainsi pas, par exemple,

retenir l'état de récidive sur la base d'une de ces condamnations. De la même façon, les sanctions qu'elles contiennent ne peuvent être mises à exécution par l'Etat de nationalité sur la base de ces seuls avis de condamnation.

8. Quelles sont les informations obligatoires sans lesquelles vous ne pouvez pas traiter un avis de condamnation transmis par un Etat partie à la Convention ?

A minima, il est nécessaire de disposer des informations suivantes :

- nom,
- prénom,
- date de naissance,
- lieu de naissance,
- juridiction de condamnation,
- date du jugement,
- libellé de l'infraction,
- date de l'infraction,
- sanctions prononcées.

9. Quels sont les problèmes rencontrés dans l'application de l'article 22 de la Convention et quelles améliorations proposeriez-vous ?

La France ne reçoit que peu d'avis de condamnation sur le fondement de l'article 22 de la Convention (envoyés majoritairement par la Suisse, Monaco et la Norvège).

Les pays qui souhaiteraient appliquer cet article devraient désigner un service référent avec une adresse mail fonctionnelle pour permettre des échanges directs entre services pour améliorer la fluidité des informations adressées sur le fondement de l'article 22. L'instauration d'un groupe de travail ciblé sur cette problématique et celle de l'article 13 devrait être envisagée au sein du Conseil de l'Europe (peut-être dans le cadre du PC-OC mod). A titre de comparaison, ECRIS, le système qui interconnecte aujourd'hui les pays membres de l'UE et permet des échanges de milliers d'avis de condamnation chaque mois, n'a pu se mettre en place qu'après l'initiative de l'Allemagne, de la Belgique, de l'Espagne et de la France de créer une interconnexion des casiers judiciaires sur la base des réflexions menées au niveau des services des casiers judiciaires. Il en est ressorti que les échanges d'information au niveau des casiers judiciaires pour être efficaces et intéressants (pour les autorités judiciaires notamment) devaient être simples et ne pas alourdir inutilement la charge pour l'Etat de condamnation. C'est ce vers quoi devrait tendre le groupe de travail.

*

Article 13

10. Quelle est l'autorité compétente dans votre système national pour appliquer cet article relatif aux transmissions d'extraits de casiers judiciaires et quelles sont ses coordonnées?

L'autorité compétente est le Casier judiciaire national (Ministère de la Justice).

Ses coordonnées postales sont les suivantes : Casier judiciaire national - Pôle des échanges internationaux - TSA 37932 - 44379 Nantes Cedex 3 - France

L'adresse courriel de contact est : cjn-bull-international@justice.gouv.fr

11. Quel est le nombre de demandes d'extraits de casier judiciaire reçues par cette autorité sur le fondement de l'article 13 pendant l'année 2018 ?

Au cours de l'année 2018, le Casier judiciaire national a reçu environ 6 000 demandes d'extraits de casier judiciaire en application de l'article 13 (Suisse, Monaco, Liechtenstein, Norvège).

12. Dans l'hypothèse où vous avez été saisis à ce titre, votre Etat a-t-il effectivement adressé aux Etats-parties requérants les extraits de casier judiciaire sollicités en application de l'article 13 de la Convention ?

Oui

13. Si ce n'est pas déjà le cas, pourriez-vous envisager d'envoyer et/ou de recevoir de tels extraits de casier judiciaire par voie dématérialisée ?

Oui. Cela suppose cependant une prise de contact préalable avec le service compétent de l'Etat requérant pour évoquer les problèmes liés à la sécurité informatique.

14. Etes-vous en mesure d'exécuter une demande basée sur l'article 13, paragraphes 1 et 2 concernant des personnes morales ?

Oui.

Commentaires:

La France dispose d'un casier judiciaire contenant les condamnations pénales prononcées par ses juridictions contre les personnes morales et serait donc en mesure de répondre à des demandes d'extrait de casier judiciaire visant des personnes morales. Il pourrait être opportun de saisir le service juridique du Conseil de l'Europe afin que la question relative à l'applicabilité de l'article 13 de la Convention aux personnes morales soit posée, de tels échanges ne se concevant que dans le cadre de la réciprocité.

15. Votre législation nationale permet-elle de répondre à une requête d'extrait de casier judiciaire pour d'autres motifs qu'une procédure pénale (par exemple, dans le cadre d'un recrutement pour une profession en contact avec des mineurs) ?

Oui.

Commentaires et exemples éventuels :

La liste suivante d'exemples n'est pas exhaustive :

- requête pour un emploi impliquant des contacts avec des enfants,
- requête pour un changement de nationalité,
- requête pour un emploi dans le secteur public,
- requête pour un emploi dans la sécurité (secteur privé),

- le pôle des échanges internationaux du Casier judiciaire national français est à même de répondre à l'Etat requérant si le motif de la requête est recevable au vu du droit interne, dans le cas où ce fondement n'est pas lié à une procédure pénale.

16. Quelles sont les informations obligatoires dont vous avez besoin pour traiter une demande d'extrait de casier judiciaire sur le fondement de l'article 13 de la convention de 1959 ?

- Nom
- Prénom
- Sexe
- Pays de naissance
- Ville de naissance (obligatoire si le pays de naissance est la France)
- Date de naissance
- Finalité de la demande

17. Acceptez-vous de répondre à une demande d'extrait de casier judiciaire visant l'article 13 de la convention de 1959 et rédigée dans une des deux langues officielles (anglais ou français) du Conseil de l'Europe ?

Oui

18. Combien de temps vous faudrait-il pour répondre à une demande d'extrait de casier judiciaire en vertu de l'article 13?

Les délais estimés sont les suivants :

- environ 10 jours, à compter de la date de réception de la demande par le Casier judiciaire national, pour une requête liée à une procédure pénale ou pour un motif administratif ;
- environ 20 jours, à compter de la date de réception de la demande par le Casier judiciaire national, pour une requête effectuée sur la demande d'un particulier.

19. Quels sont les problèmes rencontrés dans l'application de l'article 13 de la Convention et quelles améliorations proposeriez-vous ?

Afin de pouvoir adresser des demandes à l'ensemble des Etats signataires de la Convention, la France souhaiterait pouvoir disposer d'une liste exhaustive des coordonnées des services de ces derniers qui peuvent répondre à de telles demandes et si possible d'une adresse mail fonctionnelle pour initier des contacts (en anglais ou en français). Certains Etats n'ont, semble-t-il, pas encore communiqué de coordonnées à diffuser dans la « Liste d'autorités compétentes pour l'application des articles 13 et 15, paragraphe 3, de la Convention européenne d'entraide judiciaire en matière pénale (STE 030) », établie par le Secrétariat.

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8. GEORGIA / GEORGIE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

Georgia interprets “judicial records” as the data related to the conviction of the person for specific type of crime, the sentence imposed on him/her, any subsequent measures stemming from the conviction (e.g. deprivation of the driving license, decision on the forfeiture property) as well as information about the application pardon, amnesty and any form of commutation of the penalty.

2. Which data is contained in your national judicial records?

The data mentioned in response to question 1 is contained in the nation judicial records.

3. What use is made of this data?

The data contained in judicial records is used for the purpose of the proper qualification of the criminal act when the specific article of the Criminal Code of Georgia defines aggravated criminal liability for recidivism. The data referred to above is also taken into account by the court as a personal characteristic of the defendant when defining specific type and measure of penalty. Apart from criminal purposes, the data referred to above can also be used for civil, administrative and any other reasons (e.g. information is needed for the purpose of recruitment of the employees in public service).

Article 22

4. Which department in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

In Georgia, Informational Centre of the Informational-Analytical Department of the Ministry of Interior is in charge of the exchange of notifications of final convictions under Article 22 of the Convention on Mutual Assistance in Criminal Matters. The contact details of the mentioned structural unit are as follows: 10, G. Gulua Str., Tbilisi, 0114, Georgia. Tel.: (+99532) 2411008; E-mail: police@mia.gov.ge.

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

Usually per year, by post.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

7. What use do you make of notifications of conviction received?

In case Georgia recognizes foreign criminal judgments based on the relevant international treaties, local judicial authorities can use the notifications of convictions received from the respective foreign states in the course of criminal proceedings. Namely, when defining the legal qualification of the repeated criminal act committed by the defendant, information about the previous conviction abroad can be used as a ground for aggravating the criminal liability of the person in question. Notifications of conviction received from abroad can also be used for civil and administrative purposes.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention? Please tick the relevant boxes.

- Surname
- First name
- Gender
- Parents (surnames and first names of father and mother)
- Country of birth
- Place of birth
- Date of birth
- Nationality
- Relevant offence
- References of relevant criminal legislation
- Date of commission of offence
- Place of commission of offence
- Length/severity of sentence(s) handed down
- Date of conviction
- Name of sentencing authority

Article 13

10. Which department in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

In Georgia, International Cooperation Unit of the Legal Department of the Office of the Prosecutor General is in charge of the transmission of extracts from judicial records under Article 13 of the Convention on Mutual Assistance in Criminal Matters. The contact details of the mentioned structural unit are as follows: 24, Gorgasali Str., 0114, Tbilisi, Georgia. Tel.: (+99532) 2405144; E-mail: international@pog.gov.ge.

11. How many requests for judicial record extracts did this department receive on the basis of Article 13 during 2018?

International Cooperation Unit, Legal Department of the Office of the Prosecutor General of Georgia received 52 requests for judicial record extracts on the basis of Article 13 of the Convention in 2018. As of the current date, all the requests received during 2018 have been executed.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Yes

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Yes

Comments or examples: Theoretically Georgian law provides possibility to comply with the request for a judicial record extract on grounds other than for criminal proceedings. However, in practice No such requests have been submitted to the Prosecutor General's Office of Georgia so far.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Alias
- Gender
- Parents (surnames and first names of father and mother)
- Country of birth
- Place of birth
- Date of birth
- Nationality
- Purpose of the request

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

Yes.

18. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

Georgia has not encountered any significant problems in the application of Article 13 of the Convention so far.

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9. GERMANY / ALLEMAGNE

A. Questionnaire for the attention of the members of the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC)

Preliminary questions

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

We interpret “judicial records” as criminal convictions, decisions given by the administrative authorities as well as court decisions and orders in respect of lack of criminal capacity or in respect that acts were committed owing to drug addiction.

This definition is based on Section 3 of the Act on the Central Criminal Register and the Educative Measures Register (Bundeszentralregistergesetz, BZRG), the Register contains entries on

1. criminal convictions (i.e. penalty, measure of reform and prevention, warning with deferred sentence, findings as to the guilt of a juvenile or young adult),
2. (repealed)
3. decisions given by the administrative authorities and courts (e.g. refusal, withdrawal or restriction of a passport or an identity card; prohibition of the possession and purchase of weapons and ammunition; refusal of the issue of a license to possess weapons or a hunting licence or permission; refusal of an application for admission to a profession or withdrawal or revocation of the admission; prohibition of the exercise of a profession; withdrawal of the authorisation to hire or train apprentices; prohibition of the employment, supervision, instruction or training of children and juveniles)
4. decisions given by the courts and orders made by the criminal prosecution authorities in respect of lack of criminal capacity,
5. court findings with regard to acts that were committed owing to drug addiction if a term of imprisonment of no more than two years is imposed
6. subsequent decisions and facts relating to entries referred to in nos 1 to 4.

2. Which data is contained in your national judicial records?

Section 5 BZRG states that the entry must include

1. the personal details of the person concerned; these include name at birth, family name if this is different, first names, gender, date of birth, place of birth, nationality, address, alias names and any deviating personal details,
2. the decision-making body, including a reference number,
3. the date of commission of the (last) act,
4. the date of the first judgment; in the case of penal orders, the date of the first judgment is the date of signature by the judge; where an objection was lodged against the penal order, the

date of the first judgment is the date on which the decision on the objection is given, unless the objection was dismissed,

5. the date on which the judgment became final,

6. the legal designation of the act of which the convicted person has been found guilty, stating the criminal provisions applied,

7. the penalties imposed

3. What use is made of this data?

The BZRG provides for two basic types of information:

- the certificate of good conduct (sections 30 to 32) and
- the unrestricted disclosure of information (sections 41 and 42).

Based on the purpose of the certificate of good conduct, a distinction is made between:

- certificates of good conduct for private purposes pursuant to section 30 subsections (1) to (4) and
- certificates of good conduct for official purposes (i.e. presentation to another authority) pursuant to section 30 (5),
- extended certificates of good conduct (section 30a) and
- European certificates of good conduct (section 30b).

The “certificate of good conduct for private purposes”, the “certificate of good conduct for official purposes” and the “European certificate of good conduct” are available in extended form and have different content (i.e. inclusion of certain sexual and violent offences even if the entry for these offences refers to a single misdemeanour and extension of the time limits for inclusion in the extended certificate of good conduct).

Unrestricted disclosure generally includes the entire content of the Register. However, it can also vary based on the type of recipient: In certain cases, public prosecution offices and criminal courts will receive more comprehensive information than the other entitled bodies (section 41 (3)). The entire content of the Register is disclosed only to a strictly limited number of authorities for certain purposes and when there is an overriding public interest.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Bundesamt für Justiz
Referat IV 2
Internationale Registerangelegenheiten
Adenauerallee 99 – 103
D - 53113 BONN
Tel: +49 22899 410-5668

Fax: +49 22899 410-5603

Internet : www.bundesjustizamt.de

Email : bzr.international@bfj.bund.de

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

- only by post, every quarter

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

If so,

by which means (post, email, etc.)?

- only by post

what use do you make of these notifications?

- We are verifying whether the convictions shall be included in the German Central Criminal Register. This is only the case when a penalty, sentence or a measure of reform and prevention could have been imposed on account of the facts underlying the conviction even under German law. If a conviction is included in the Register, we store it for as long as required by our national law.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

Strictly required information:

- Surname at birth
- First name
- Date of birth
- Relevant offence
- References of relevant criminal legislation
- Length/severity of sentence(s) handed down
- Date of conviction of the first instance
- Name and file number of sentencing authority
- Date on which the judgment became final

Information required facilitating the process:

- Surname
- Place of birth
- Nationality
- Date of commission of offence
- Place of commission of offence

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

- It happens regularly that notifications of convictions cannot be delivered and are returned to us.
- Many notifications lack the confirmation that the conviction has become final.

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Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Bundesamt für Justiz
Referat IV 2
Internationale Registerangelegenheiten
Adenauerallee 99 – 103
D - 53113 BONN
Tel: +49 22899 410-5668
Fax: +49 22899 410-5603
Internet: www.bundesjustizamt.de
Email: bzr.international@bfj.bund.de

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

- In 2018 the Federal Office of Justice received 2.551 requests.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Yes

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

In Germany no convictions can be issued against legal persons. Therefore, the Central Criminal Register does not contain information in this regard.

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Yes

Comments or examples:

According to Section 57 para. 1 BZRG, agencies in another state receive unrestricted information extracted from the Register or for issuance of a certificate of good conduct for official purposes. The request needs exactly stating the purpose of the request so that it can be examined on a case-by-case basis whether information could be provided under German law. The information may only be used for that purpose.

Generally, foreign agencies receive judicial record extracts for the same purposes and in the same scope as to comparable German agencies, i.e. unrestricted disclosure of information (Section 41 BZRG) and (extended) certificates of good conduct for official purposes (i.e. presentation to another authority, Section 31 BZRG).

The following foreign agencies get an unrestricted disclosure of information:

1. the courts, court presidents, public prosecution offices and supervising authorities for the purposes of the administration of justice and to prisons for the purposes of the execution of sentences, including conducting checks of all those employed in the prison service,
2. the highest federal and Land authorities,
3. the offices for the protection of the constitution at federal and Land level, the Federal Intelligence Service and the Military Counterintelligence Service for security tasks assigned to these authorities,
4. the fiscal authorities for the prosecution of those criminal offences which fall within their remit,
5. the police stations responsible for criminal offences for the purposes of the prevention and prosecution of criminal offences,
6. the naturalisation authorities for naturalisation procedures,
7. the foreigners' authorities and the Federal Office for Migration and Refugees if the information refers to a foreign national,
8. the authorities responsible for pardons in matters relating to pardons,
9. the authorities competent in regard to licences issued under weapons law or explosives law, the issue of hunting licences, licences to keep a dangerous dog or licences issued to the security industry and security staff screening,
10. the Federal Institute for Drugs and Medical Devices in the context of the licensing procedure under the Narcotics Act,
11. the bar associations or chambers of patent lawyers for decisions given in proceedings concerning admission, acceptance and supervision under the Federal Lawyers' Act, the Patent Lawyers' Act, the Act on the Activities of European Lawyers in Germany or the Act on the Activities of European Patent Lawyers in Germany,

12. the Federal Office for the Safety of Nuclear Waste Management as part of nuclear reliability checks under the Atomic Energy Act,

13. the aviation security authorities for the purposes of reliability checks under section 7 of the Aviation Security Act,

14. the Financial Intelligence Unit (FIU) for the purposes of fulfilling tasks assigned under the Money Laundering Act

Authorities are sent an extended certificate of good conduct for official purposes (including for the purposes of protecting minors) under the condition that it is required in the fulfilment of their sovereign tasks and it is not appropriate to request the person concerned to present a certificate of good conduct or such a request was unsuccessful.

Private persons or legal entities under private law have no right to information to the extent stated above. Private persons can apply for a private certificate of good conduct. Therefore, the response to a request in connection with the recruitment to a profession involving contact with minors is generally only possible if the certificate of good conduct is issued to the applying person.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- First name
- Alias
- Place of birth
- Date of birth
- Nationality
- Purpose of the request

Other:

- Surname at birth

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

- No.

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

- Under normal circumstances we handle those requests within 5-7 working days.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

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10. ITALY / ITALIE

Preliminary questions

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

The notion of “judicial records” includes the criminal convictions and the other judicial decisions provided by law.

2. Which data is contained in your national judicial records?

Our judicial records include criminal convictions and decisions concerning their enforcement; decision concerning the legal capacity; expulsions from the territory of the State and appeals thereof.

The relevant certificates include the following data: name, surname, *alias* (if there are any), date and place of birth, gender.

The request of extracts from judicial records may include the following details (non-mandatory): father’s name (if available), mother’s name (if available), residence or domicile (if available).

3. What use is made of this data?

Data is only used for the purposes of Justice, in compliance with laws on privacy and data protection.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Ministry of Justice - Directorate General for Criminal Justice – Office III “Casellario Giudiziale”

TEL: 0039-06-68189240

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

Italy sends out information on convictions and subsequent measures at least once a year, according to article 22 of the 1959 Convention. Such information is sent by e-mail in a digital PDF format or, in exceptional cases, by post service.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Comments, if any: see the answer above

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

If so,

by which means (post, email, etc.)?

We receive these notifications by post service

what use do you make of these notifications?

We send the notifications of the most important convictions to the competent General Prosecutor Office attached to Court of Appeal, for the purposes provided for by article 730, paragraph 2, of the Code of Criminal Procedure.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

The place of birth of the convicted person (if known).

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

It can be difficult to manage the amount of notifications to be sent.

*

Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Ministry of Justice - Directorate General for Criminal Justice – Office III “Casellario Giudiziale”
TEL: 0039-06-68189240

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

The requests of extracts from judicial records received during 2018 have been about 1.000. Normally, each request refers to more than one name (person); the actual produced certificates have been about 8.000.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

Comments: The relevant procedure must be implemented.

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Yes

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname x
- First name x
- Gender x
- Country of birth x
- Place of birth x
- Date of birth x

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

This Office accepts requests in Italian or English, but, at the moment, we do not translate into English (or any other language) the replies to the requests.

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

This Office responds to the requests sent under article 13 in two or three days. Only for urgent cases, the reply is sent on the same day on which the request is received.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

Sometimes the requests do not contain all the information needed in order to extract the judicial records.

11. LATVIA / LETTONIE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

This concerns the area of competence of the Ministry of Justice.

2. Which data is contained in your national judicial records?

It is not within the competence of the Ministry of Interior Information Center.

3. What use is made of this data?

The essence of this question is unclear.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

The Ministry of Interior Information Center provides information about convictions (criminal records).

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

Once a year. By post.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes but not from all State Parties.

If so,

by which means (post, email, etc.)? By post.

what use do you make of these notifications?

According to the Punishment Register Law this data is included in the Punishment Register.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention? 9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

Correct personal data is very important as well as detailed information on conviction and on release.

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

Not all States Parties provide information.

*

Article 13

(The Ministry of Interior Information Center does not apply Article 13, thus we are unable to answer the questions of this section.)

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Ministry of Justice is the relevant authority responsible for applying this provision.

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

It is in the area of competence of the Ministry of Justice.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

This question is not within the competence of the Ministry of Interior Information Center.

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

This question is not within the competence of the Ministry of Interior Information Center.

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Comments:

This question is not within the competence of the Ministry of Interior Information Center.

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Comments or examples: ...

We do not directly respond to the requests from third States; however a response is given through the intermediary of the State Police.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

This question is not within the competence of the Ministry of Interior Information Center.

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

This question is not within the competence of the Ministry of Interior Information Center.

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

If a request is received, we prepare a response and it is then sent through the intermediary of the State Police.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

This question is not within the competence of the Ministry of Interior Information Center.

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12. MONACO

1. Comment interprétez-vous la notion de « casier judiciaire », telle que mentionnée aux articles 13 et 22 de la Convention, dans votre juridiction ?

Le casier judiciaire désigne le relevé des condamnations judiciaires rendues à l'encontre d'une personne privée ou morale

2. Quelles sont les données contenues dans vos casiers judiciaires nationaux ?

- **Le bulletin n°1** mentionne les noms, prénoms, filiation, date et lieu de naissance, domicile, profession et nationalité du condamné.

Lorsqu'il s'agit d'une personne morale, ce bulletin mentionne l'identité, les raison ou dénomination sociale, forme juridique, siège social et objet social de la personne morale condamnée.

Il mentionne également la juridiction qui a statué, le caractère définitif ou non du jugement ou de l'arrêt, son caractère contradictoire, par défaut ou par contumace, la date de la condamnation, la nature des crimes et délits qui ont motivé la condamnation et la date de ces infractions, la nature, la durée, le taux de la peine prononcée, le bénéfice du sursis s'il a été accordé, le texte visé par le jugement ou l'arrêt, le refus de l'imputation de la détention préventive ou, s'il y a eu imputation, la date du mandat d'arrêt ou de l'ordonnance de prise de corps.

- **Le bulletin n°2** reproduit les mentions du bulletin n°1 à l'exclusion :

1° Des décisions concernant les mineurs ;

2° Des décisions assorties du bénéfice du sursis, sauf s'il y a eu révocation ;

3° Des condamnations effacées par la réhabilitation ;

4° Des jugements prononçant la faillite personnelle ou certaines des déchéances de la faillite personnelle effacés par la réhabilitation.

- **Le bulletin n°3** est le relevé des condamnations à des peines privatives de liberté prononcées par une juridiction répressive monégasque pour crime ou délit et pour lesquelles le sursis n'a pas été accordé. N'y sont pas inscrites les condamnations déjà exclues au bulletin n° 2.

3. Quelle est l'utilisation faite de ces données ?

Le bulletin n° 1 est destiné à être classé au Greffe Général, le bulletin n°2 n'est délivré qu'aux autorités judiciaires, ou aux administrations publiques pour les besoins de la constitution d'un dossier administratif, le bulletin n°3 ne peut être réclamé que par la personne qu'il concerne ou par son représentant légal et ne doit en aucun cas être délivré à un tiers.

Article 22

4. Quelle est l'autorité compétente dans votre système national pour appliquer cet article relatif aux échanges automatiques d'avis de condamnation entre Etats-parties et quelles sont ses coordonnées?

Direction des Services Judiciaires
Palais de Justice
5, rue Colonel Bellando de Castro 98000 MONACO
T : +377 98 98 81 63 / 81 18
F : +377 98 98 85 89
Mail : dsj@justice.mc

5. Votre Etat adresse-t-il des avis de condamnation aux autres Etats parties en application de l'article 22 de la Convention ?

Oui

Deux fois par an (juin et décembre) par voie postale

6. Pourriez-vous envisager, si ce n'est pas déjà le cas, d'envoyer et/ou de recevoir de tels avis de condamnation par voie électronique ?

Oui

7. Votre Etat reçoit-il des avis de condamnation d'autres Etats Parties en vertu de l'article 22 de la Convention ?

Non

Le seul Etat faisant parvenir les avis de condamnation de ressortissants monégasques est la France, en vertu de la Convention bilatérale d'entraide judiciaire en matière pénale du 8/11/2005. Ces condamnations sont inscrites au casier judiciaire national et classées au Greffe Général.

8. Quelles sont les informations obligatoires sans lesquelles vous ne pouvez pas traiter un avis de condamnation transmis par un Etat partie à la Convention ?

L'avis de condamnation transmis par un Etat partie à la convention doit faire figurer les mentions inscrites au bulletin n°1 de l'extrait de casier judiciaire monégasque.

9. Quels sont les problèmes rencontrés dans l'application de l'article 22 de la Convention et quelles améliorations proposeriez-vous ?

Certains Etats exigent une traduction des avis de condamnation en anglais ou dans leur langue, ce qui engendre des frais supplémentaires pour les autorités monégasques, pour une démarche volontaire de leur part et en rien réciproque.

*

Article 13

10. Quelle est l'autorité compétente dans votre système national pour appliquer cet article relatif aux transmissions d'extraits de casiers judiciaires et quelles sont ses coordonnées?

Direction des Services Judiciaires
Palais de Justice
5, rue Colonel Bellando de Castro 98000 MONACO
T : +377 98 98 81 63 / 81 18
F : +377 98 98 85 89
Mail : dsj@justice.mc

11. Quel est le nombre de demandes d'extraits de casier judiciaire reçues par cette autorité sur le fondement de l'article 13 pendant l'année 2018 ?

Aucune

12. Dans l'hypothèse où vous avez été saisis à ce titre, votre Etat a-t-il effectivement adressé aux Etats-parties requérants les extraits de casier judiciaire sollicités en application de l'article 13 de la Convention ?

Notre Etat n'a pas été saisi de demandes

13. Si ce n'est pas déjà le cas, pourriez-vous envisager d'envoyer et/ou de recevoir de tels extraits de casier judiciaire par voie dématérialisée ?

Oui

14. Etes-vous en mesure d'exécuter une demande basée sur l'article 13, paragraphes 1 et 2 concernant des personnes morales ?

Oui

15. Votre législation nationale permet-elle de répondre à une requête d'extrait de casier judiciaire pour d'autres motifs qu'une procédure pénale (par exemple, dans le cadre d'un recrutement pour une profession en contact avec des mineurs) ?

Non

Les autorités monégasques ne transmettent pas d'avis de condamnation à un tiers étranger, hors le cadre de l'entraide judiciaire en matière pénale.

Toutefois, si une administration publique, ou un employeur privé, étrangers, avaient besoin d'un extrait de casier judiciaire pour la constitution d'un dossier administratif, la personne concernée par cet extrait pourrait directement solliciter du Greffe Général la délivrance d'un bulletin n°3, afin de le remettre à qui de droit.

16. Quelles sont les informations obligatoires dont vous avez besoin pour traiter une demande d'extrait de casier judiciaire sur le fondement de l'article 13 de la convention de 1959 ?

- Nom
- Prénom
- Alias

- Sexe
- Filiation (nom et prénom du père et de la mère)
- Pays de naissance
- Ville de naissance
- Date de naissance
- Nationalité
- Finalité de la demande

17. Acceptez-vous de répondre à une demande d'extrait de casier judiciaire visant l'article 13 de la convention de 1959 et rédigée dans une des deux langues officielles (anglais ou français) du Conseil de l'Europe ?

La demande doit être rédigée en langue française.

18. Combien de temps vous faudrait-il pour répondre à une demande d'extrait de casier judiciaire en vertu de l'article 13?

la demande serait exécutée à très bref délai, néanmoins, l'article 204-1 du Code de procédure pénale monégasque impose désormais au Parquet Général, dans le cadre d'une demande d'entraide judiciaire en matière pénale, *"de conserver pendant un délai de deux mois à partir de la date de réception, les documents qui la fondent et les pièces d'exécution qui y sont jointes"* afin de permettre aux éventuels avocats des personnes qui font l'objet de mesures exécutées en application d'une demande d'entraide d'en prendre connaissance.

19. Quels sont les problèmes rencontrés dans l'application de l'article 13 de la Convention et quelles améliorations proposeriez-vous ?

Pas de retour d'expérience, les autorités monégasques n'ont jamais été saisies d'une telle demande, et n'en ont pas émise non plus.

*

13. REPUBLIC OF KOREA / REPUBLIQUE DE COREE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

The term “judicial records” is interpreted as all of the documents that is recorded in the court’s trial process in which the investigative authorities have investigated and have indicted

2. Which data is contained in your national judicial records?

In our judicial records, the following data is included; personal information of the accused, the reasons for initiating the investigation, the contents of the investigation, statements of the accused and relevent persons, other evidence gathered by the investigative authorities, the petition of appeal(indictment), protocol(report) of the trial, and the written court ruling.

3. What use is made of this data?

It is used in the investigative process, and/or trial process, and/or in the process of the execution of the sentence.

4. Which department in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Central Institution in charge of mutual legal assistance in ciminal matters.

Mailing Address:

Director Mr. LEE, Dong-un
International Criminal Affairs Division
Ministry of Justice
47 Gwanmun-ro, Gwacheon
13809, Republic of Korea

Contact Points:

Prosecutor: OH Jinse jinse@spo.go.kr
Legal Officer: CHOI Chang-hwan longpine@spo.go.kr

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

No

Because, if a national of a Contracting Party is arrested in the territory of Republic of Korea, the consulate of the Contracting Party residing in Republic of Korea is notified pursuant to Article 36 of the Vienna Convention on Consular Relations, and extracts from and information relating to judicial records are provided pursuant to Article 13 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

7. What use do you make of notifications of conviction received?

It is not utilized widely because it is difficult to verify the identity of our national from the contents of the notification.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention? Please tick the relevant boxes.

- Surname
- First name
- Gender
- Date of birth
- Nationality
- Relevant offence
- References of relevant criminal legislation
- Date of commission of offence
- Place of commission of offence
- Length/severity of sentence(s) handed down
- Date of conviction
- Name of sentencing authority
- Other: Copy of passport or passport number of our national subject to the notification, in order to verify the identity.

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

It is difficult to verify the identity of our national just by the contents of the notification. The notification need to include a copy of passport, and/or passport number information so that we can verify the identity of our national, subject to the notification.

10. Which department in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Central Institution in charge of mutual legal assistance in criminal matters

Mailing Address:

Director Mr. LEE, Dong-un

International Criminal Affairs Division

Ministry of Justice

47 Gwanmun-ro, Gwacheon

13809, Republic of Korea

Contact Points:

Prosecutor: OH Jinse jinse@spo.go.kr

Legal Officer: CHOI Chang-hwan longpine@spo.go.kr

11. How many requests for judicial record extracts did this department receive on the basis of Article 13 during 2018?

2 cases in the year 2018.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Yes

[14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

No

To follow through the request for mutual legal assistance in criminal matters, the criteria of dual criminality must be met according to our nation's criminal code. However, in the cases of requests on grounds other than for criminal proceedings, the criteria of dual criminality may be difficult to fulfill.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Alias
- Gender
- Date of birth
- Nationality
- Purpose of the request
- Other: facts of crime, process of investigation, charge and applicable law, name of investigation authority, etc.

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

Judicial records are provided in their original language (Korean), in principle.

18. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

If there is no information about the investigative authority or judicial authority of the requested case, it may be difficult to confirm the location of that case file, so information about the requested case is crucial, if possible.

*

14. REPUBLIC OF MACEDONIA / REPUBLIQUE DE MACEDOINE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

Art. 225 Para. 1 of the Criminal Procedure Code of Montenegro provides that criminal records on persons convicted of criminal offenses committed in the territory of Montenegro as well as persons convicted of criminal offenses by foreign courts are kept by the Ministry competent for judiciary (Ministry of Justice).

Pursuant to Article 2 of the Regulation on the Way of Keeping Criminal Records criminal records are:

1) records of persons convicted of criminal offenses committed in the territory of Montenegro and

2) records of persons convicted of criminal offenses by foreign courts i.e Montenegrin nationals, foreign nationals and stateless persons born in the territory of Montenegro and foreign nationals and stateless persons permanently residing in Montenegro, for which information were submitted to the Ministry of Justice.

2. Which data is contained in your national judicial records?

Article 123 of the Criminal Code of Montenegro stipulates that criminal records shall include personal data on the criminal offender, criminal offence, penalty, suspended sentence, judicial admonition, release from punishment and remission of penalty, as well as data on the legal consequences of conviction. The criminal records shall also include subsequent changes to criminal records data, information on sentence serving, as well as annulment of records on wrongful convictions.

3. What use is made of this data?

Criminal records information may be provided to authorities, natural and legal persons, in accordance with Article 123 of the Criminal Code, only under the conditions prescribed by law, and on the basis of a written request that must be explained.

Article 123 of the Criminal Code of Montenegro stipulates that criminal record data may be disclosed solely to a court, public prosecutor and administration authority competent for police affairs, in connection with criminal proceedings conducted against a person with prior conviction, as well as to authority competent for criminal sanctions enforcement and authority taking part in the procedure of granting amnesty, pardon, rehabilitation or the procedure whereby a decision is made to terminate legal consequences of conviction, as well as to guardianship authorities where so required for the needs of performing affairs within their competence.

Criminal record data may also be disclosed, upon a substantiated request, to a state authority, business organisation, other organization or entrepreneur, where legal consequences of a conviction or security measures are still in effect, and where justified interest based on law exists in doing so.

No one shall be entitled to request a citizen to submit any evidence of their prior convictions or of no criminal conviction.

Upon their application, citizens may be supplied with data of their prior convictions or of no criminal conviction only where they need them the purpose of exercising their rights abroad.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

The Ministry of Justice of Montenegro, in accordance with Article 22 of the European Convention on Mutual Assistance in Criminal Matters, is responsible for the exchange of notifications of final convictions and subsequent measures concerning nationals of that Party, which are recorded in the criminal record.

Contact information for the exchange of notifications:

Ministry of Justice
Directorate for International Cooperation
Head of Division for Mutual Legal Assistance
Ms. Snezana Maraš
E-mail: snezana.maras@mpa.gov.me; Tel. +382 20 407 510

Ministry of Justice
Directorate for Execution of Criminal Sanctions
Head of Division for Criminal and Misdemeanor Record
Ms. Tanja Gogić
E-mail: tanja.gogic@mpa.gov.me; Tel: +382 20 675 439

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Pursuant to Article 22 of the European Convention on Mutual Assistance in Criminal Matters, the Ministry of Justice of Montenegro submits notifications once a year.

If so, how often and by which means (post, email, etc.)?

Notifications shall be submitted by post.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

Comments, if any: /

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

If so,

by which means (post, email, etc.)? By post

what use do you make of these notifications?

Notifications received from State Parties are entered by the Ministry of Justice in the Criminal Records.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

The information submitted by the State Party must contain the following information:

personal data on the criminal offender, criminal offence, penalty, suspended sentence, judicial admonition, release from punishment and remission of penalty, as well as data on the legal consequences of conviction. The criminal records shall also include subsequent changes to criminal records data, information on sentence serving, as well as annulment of records on wrongful convictions.

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

*

Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Art. 225 Para. 1 of the Criminal Procedure Code of Montenegro provides that criminal records on persons convicted of criminal offenses committed in the territory of Montenegro as well as persons convicted of criminal offenses by foreign courts are kept by the ministry competent for judiciary (Ministry of Justice).

Directorate for Execution of Criminal Sanctions
Head of Division for Criminal and Misdemeanor Record
Ms. Tanja Gogić
E-mail: tanja.gogic@mpa.gov.me; Tel: +382 20 675 439

Directorate for International Cooperation
Head of Division for Mutual Legal Assistance
Ms. Snezana Maras
E-mail: snezana.maras@mpa.gov.me; Tel. +382 20 407 510

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

We are not able to provide this information.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Yes

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Gender
- Parents (surnames and first names of father and mother)
- Country of birth
- Place of birth
- Date of birth
- Purpose of the request

Other:

information on criminal offence, penalty, suspended sentence, judicial admonition, release from punishment and remission of penalty, as well as data on the legal consequences of conviction. The criminal records shall also include subsequent changes to criminal records data, information on sentence serving, as well as annulment of records on wrongful convictions.

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

Yes

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

Extract from criminal record shall be issued within 8 days from the day of receipt of the request, after which the information shall be sent by post to the competent authority of the State Party.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

15. ROMANIA / ROUMANIE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

The notion of judicial record is defined by the national Law, namely Law 290/2004 on judicial record.

2. Which data is contained in your national judicial records?

In the criminal record, the records of the natural persons and of the legal persons convicted or against whom other criminal or administrative measures have been taken according to the Criminal Code, as well as those against which procedural-criminal measures have been ordered are kept. These data refer to: penalties and security measures, the educational measure of admission to a special school of re-education work (in the past, re-education center) or medical-educational institute; the beginning, the interruption and the cessation of the execution of the prison sentence, of the security measures or of the educational measures, the conditional release and its revocation, the amnesty, the pardon, the prescription, the rehabilitation; the penalties and measures given by final judgments by the foreign courts, as well as the measures taken by the foreign criminal judicial bodies abroad, if those decisions or acts have been recognized by the Romanian competent bodies; the final decisions that require changes of record; extradition. Also, within the judicial record are to be found, provisionally, until the final settlement of the case, data regarding the commencement of the criminal action and the preventive arrest. The registration is made nominally, by entering the personal and judicial data, and, in the cases provided by law, the record is also kept dactyloscopically. The data entered in the criminal record or on which provisional notices have been made, it is noticeable if: the acts committed by the person in question are no longer provided by law as crimes; was rehabilitated; two years have passed since the date of the amnesty intervention; he was sentenced to a fine or imprisonment for a maximum of 3 years and 20 years have elapsed since his conviction; deceased, criminal prosecution has been closed or a final decision was issued to pay or stop the criminal trial; one year has passed since the date of the educational measure; a definitive decision to postpone the application of the sentence has been delivered and it was not ordered to revoke or cancel the postponement of the application of the sentence according to art. 88 or 89 of the Romanian Criminal Code; 5 years have passed since the date of application of one of the administrative sanctions provided the Criminal Code.

3. What use is made of this data?

Article 22

4. Which department in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Division for Judicial Cooperation in Criminal Matters
Directorate for International Law and Judicial Cooperation
Ministry of Justice of Romania

Contact details:

Fax : +4 037 204 1079

E-mail : dreptinternational@just.ro

Str. Apolodor Nr.17, sector 5, București

Web : www.just.ro

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

By poste only, at least once a year.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

7. What use do you make of notifications of conviction received?

Notifications received from the competent authorities of foreign States are received by the Ministry of Justice, which shall send them to the competent Romanian authorities, in view of proceeding according to their powers in what regards the recognition and, respectively, the registration of foreign criminal decisions.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention? Please tick the relevant boxes.

- Surname
- First name
- Parents (surnames and first names of father and mother)
- Date of birth
- Relevant offence
- References of relevant criminal legislation
- Date of commission of offence
- Place of commission of offence
- Length/severity of sentence(s) handed down
- Date of conviction
- Name of sentencing authority
- Other:

8. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

*

Article 13

9. Which department in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact

Directorate of Criminal Records, Statistics and Operational Records
General Inspectorate of the Romanian Police.

Contact details:

Tel: 0041. 21.316.49.75, 004121.208.25.25,

Fax: 004121.317.87.90,

E-mail - cazier.eu@politiaromana.ro cazier@politiaromana.ro

Șos. Ștefan cel Mare, nr. 13-15, Sector 2, București

10. How many requests for judicial record extracts did this department receive on the basis of Article 13 during 2018?

Starting with April 28, 2012, the data exchange between the Member States is done through the European system ECRIS based on the Framework Decision 315/2009/JHA and not the 1959 Convention. Based on the respective system, during 2018, a number of 118.670 requests from the Member States have been received (for criminal and non-criminal purposes). Also, during the same reference period, the respective unit in Romania received from the third countries (non-EU) a number of 344 requests for extracts from the criminal record.

11. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

12. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

[14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

No

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

No

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Gender
- Parents (surnames and first names of father and mother)

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

No, response is always to be drafted into Romanian language

18. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

In general, difficulties arose in situations where requests were communicated in a language other than the Romanian one.

16. RUSSIAN FEDERATION / FEDERATION DE RUSSIE

1. Comment interprétez-vous la notion de « casier judiciaire », telle que mentionnée aux articles 13 et 22 de la Convention, dans votre juridiction ?

Sous la notion de « casier judiciaire » on comprend des actes judiciaires en matière répressive (des décisions judiciaires, des jugements) et d'autres documents rédigés par des participants au procès dans le cadre de l'examen de l'affaire pénale.

2. Quelles sont les données contenues dans vos casiers judiciaires nationaux ?

Selon les types de documents des casiers judiciaires peuvent contenir :

- des informations sur des parties et d'autres personnes participantes à la procédure, leurs représentants ;
- des règles législatives, prévoyant la responsabilité pour l'infraction étant à la base de l'accusation ;
- la description du délit ;
- des preuves et d'autres renseignements.

3. Quelle est l'utilisation faite de ces données ?

Ces données peuvent représenter des décisions judiciaires ou contenir des preuves.

4. Quelle est l'autorité compétente dans votre système national pour appliquer l'article 22 de la Convention relative aux échanges automatiques d'avis de condamnation entre Etats-parties et quelles sont ses coordonnées?

En vertu de l'alinéa 7 de la Loi fédérale en date du 25.10.1999 № 193-FZ « Sur la ratification de la Convention européenne d'entraide judiciaire en matière pénale et du Protocole additionnel à cette Convention » cette autorité est le Ministère de la Justice de la Fédération de Russie – ulitsa Gitnaya, 14, Moscou, Federation de Russie. 119991.

5. Votre Etat adresse-t-il des avis de condamnation aux autres Etats parties en application de l'article 22 de la Convention ?

Oui, il les adresse.

6. Pourriez-vous envisager, si ce n'est pas déjà le cas, d'envoyer et/ou de recevoir de tels avis de condamnation par voie électronique ?

Oui, mais en vertu du principe de réciprocité et avec le respect des exigences à la protection des données personnelles (par des voies protégées de communication, etc.).

7. Votre Etat reçoit-il des avis de condamnation d'autres Etats Parties en vertu de l'article 22 de la Convention ?

Oui, il les reçoit.

8. Quelles sont les informations obligatoires sans lesquelles vous ne pouvez pas traiter un avis de condamnation transmis par un Etat partie à la Convention ?

Le nom, le prénom et le patronyme du mis en examen, la date de sa naissance, le lieu de naissance, les textes de la loi à la base desquels la personne a été poursuivie dans un Etat étranger et des informations sur la peine fixée à l'intéressé.

9. Quels sont les problèmes rencontrés dans l'application de l'article 22 de la Convention et quelles améliorations proposeriez-vous ?

L'article 22 de la Convention ne prévoit pas la traduction des informations sur des jugements ainsi que des données personnelles des personnes condamnées.

10. Quelle est l'autorité compétente dans votre système national pour appliquer cet article relatif aux transmissions d'extraits de casiers judiciaires et quelles sont ses coordonnées?

En vertu de l'alinéa 7 de la Loi fédérale en date du 25.10.1999 N 193-FZ « Sur la ratification de la Convention européenne d'entraide judiciaire en matière pénale et du Protocole additionnel à cette Convention » cette autorité est le Ministère de la Justice de la Fédération de Russie – ulitsa Gitnaya, 14, Moscou, 119991.

11. Quel est le nombre de demandes d'extraits de casier judiciaire reçues par cette autorité sur le fondement de l'article 13 pendant l'année 2018 ?

On n'a eu aucunes demandes.

12. Dans l'hypothèse où vous avez été saisis à ce titre, votre Etat a-t-il effectivement adressé aux Etats-parties requérants les extraits de casier judiciaire sollicités en application de l'article 13 de la Convention ?

Le Ministère de la Justice de la Russie n'a pas eu aucunes demandes émises par des tribunaux russes pour leur envoi ultérieur sur le territoire d'un Etat étranger.

13. Si ce n'est pas déjà le cas, pourriez-vous envisager d'envoyer et/ou de recevoir de tels extraits de casier judiciaire par voie dématérialisée ?

Non

14. Etes-vous en mesure d'exécuter une demande basée sur l'article 13, paragraphes 1 et 2 concernant des personnes morales ?

Oui

15. Votre législation nationale permet-elle de répondre à une requête d'extrait de casier judiciaire pour d'autres motifs qu'une procédure pénale (par exemple, dans le cadre d'un recrutement pour une profession en contact avec des mineurs) ?

Non

16. Quelles sont les informations obligatoires dont vous avez besoin pour traiter une demande d'extrait de casier judiciaire sur le fondement de l'article 13 de la convention de 1959 ?

Une demande doit contenir des informations suivantes : l'objectif, le nom, le prénom et le patronyme du mis en examen, la date de sa naissance, le lieu de naissance, les textes de la

loi à la base desquels la personne a été poursuivie dans un Etat étranger et des informations sur la peine fixée à l'intéressé.

17. Acceptez-vous de répondre à une demande d'extrait de casier judiciaire visant l'article 13 de la convention de 1959 et rédigée dans une des deux langues officielles (anglais ou français) du Conseil de l'Europe ?

La demande doit être accompagnée de sa traduction en langue russe.

18. Combien de temps vous faudrait-il pour répondre à une demande d'extrait de casier judiciaire en vertu de l'article 13?

De 3 à 6 mois environ

19. Quels sont les problèmes rencontrés dans l'application de l'article 13 de la Convention et quelles améliorations proposeriez-vous ?

Il n'y a pas de pratique d'application.

*

17. SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

The judicial records is a national database collecting information on persons who have been lawfully convicted in criminal proceedings, whose prosecution has been lawfully conditionally suspended, on proceedings in which a settlement has been approved and the prosecution has been terminated, either by the court or the prosecutor and on decisions and measures that follow from such decisions and other facts, if required by law.

2. Which data is contained in your national judicial records?

1 / if the prosecution has resulted in a valid conviction:

a) data relating to the identity of the sentenced natural person and legal entity

aa) in relation to a convicted natural person

- name, surname and maiden name, alias or nickname, if applicable; in the case of a change of name or change of surname also the original name or surname
- date of birth, birth identification number, number and type of identity document, place and district of birth,
- permanent residence and, for persons born abroad, the country of birth,
- citizenship as well as other citizenship of another Member State of the European Union,
- sex,
- name, surname and maiden name of parents,

ab) in relation to a convicted legal entity

- the company name or name and registered seat of the legal entity,
- identification number, if assigned,
- the register in which the legal entity is registered.

b) information on courts which have decided at first instance and on appeal proceedings and their file numbers, including the date of the judgment and the date on which the judgment became final;

c) a decision on guilt, indicating the legal classification of the act, the place and time of the offense, the type and rate of the punishment and the protective measures, their enforcement and the restrictions or obligations imposed,

d) changes of the decision in the appellate proceedings;

e) changes related to the execution of the sentence or protective measure.

f) a court decision on conditional release from a service of a term of imprisonment or a decision on a conditional waiver of the execution of the remaining term of punishment by disqualification or punishment by prohibition of residence and other punishments,

g) a court decision on ordering the execution of a conditionally suspended custodial sentence;

h) the decision of the court converting the punishment by house arrest or community service into an imprisonment punishment;

i) the decision of the court ordering a substitute sentence of imprisonment instead of a fine;

j) grant of mercy,

k) participation of the sentenced person in an amnesty;

2 / in the case of a conditional suspension of criminal prosecution by a court or a prosecutor, in addition to the above –mentioned details concerning the identity of the person, judicial records contain :

a) designation of the court or prosecutor's office and the reference number of the criminal case file;

- b) date of the decision's issuance and the date of its validity;
- c) description of circumstances of the act and its legal qualification;
- d) whether the accused person has made good during the probationary period; or
- e) prosecution is will continue;
- f) probationary period has expired and the certificate has not been decided.

The report on the conditional suspension of criminal prosecution shall be removed from the criminal records upon receipt of a written report that the prosecution is continuing;

(3) in the case of a decision of settlement and suspension of prosecution, in addition to the above-mentioned details concerning the identity of the person, judicial records contain :

- a) designation of the court or prosecutor's office and the reference number of the criminal case file;
- b) date of the decision's issuance and the date of its validity;
- c) description of circumstances of the act and its legal qualification.

3. What use is made of this data?

Data is used for the purpose of criminal proceedings, civil proceedings, administrative judicial proceedings or administrative proceedings, national security protection, certificates of integrity and reliability of the person.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Ministry of Justice
Župné námestie 1
811 03 Bratislava
Slovak Republic

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes.

If so, how often and by which means (post, email, etc.)?

Notifications are sent approximately once a year. However, the communication with some countries is more intensive and notifications are sent four times a year. Notifications are sent via post.

If not, could you indicate the reasons?

Does not apply.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

No.

Comments, if any:

Due to the personal data protection we prefer to send and receive the notifications by post.

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes.

If so,

by which means (post, email, etc.)?

Notifications are sent to the Slovak Republic by post.

what use do you make of these notifications?

All such written notifications are embedded in the criminal records register (in accordance with the Act no. 330/2007 on the Criminal Register).

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

The notification must contain at least the following information:

- (a) identification data: name, surname, date and place of birth, nationality;
- (b) conviction information: court, file number, date of issuance of the judgment, legal qualification of the act and the punishment imposed.

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

We have encountered the following problems:

- A structured standardized form would simplify the application of the said article.
- There is a problem with notification's translation sent according to this article.
- Another issue is the scope of the data provided.
- Some states send information with several years delay, thus not current.
- In relation to information on convictions already notified, no additional decisions are sent (for example deletion of conviction).

Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

General Prosecutor's Office
Štúrova 2
812 85 Bratislava
Slovak Republic

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

The General Prosecutor's Office received 28 requests on the basis of Article 13 during the year 2018.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

If not, could you indicate the reasons?

No requests were made to us

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Extract may be sent or received electronically, but we subsequently request and also send to the requesting state its original paper version.

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes.

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Based on the wording of Art. 13, par. 2, the Slovak Republic would, in the case of such request, proceed in the same way as in the case of a similar national request, thus in accordance with our national legislation.

In practice, however, there are no agreed rules for such exchange within the frame of this treaty. It is not possible to verify whether the requesting authority is the competent one. Declarations made by parties to the treaty designate only judicial authorities for the purpose of criminal proceedings and not the authorities for the purpose of the other types of proceedings.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Gender
- Parents (surnames and first names of father and mother)
- Country of birth
- Place of birth
- Date of birth/ identification number if available
- Nationality
- Purpose of the request

The request will be processed only if on the basis of the data provided it is possible to clearly identify the person in question. Otherwise, we will ask for additional information.

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

Yes. The Slovak Republic in line with its declaration towards Article 16 accepts the requests and supporting documents in either Slovak language or in one of the official languages of the Council of Europe or together with a translation into one of these languages.

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

On average, it takes us two weeks to respond to such a request.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

There is no sufficient information about the identity of the person and the purpose of the use of the requested data is often missing.

*

18. SWEDEN /SUEDE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

See below.

2. Which data is contained in your national judicial records?

The Swedish criminal record contains the following information:

Identity information regarding the convicted person

Convictions from courts

Decisions from prosecutors

Decisions from the customs

Fines from the police

Foreign judgments

3. The information can be used for any purpose stated in Swedish legislation, for example for criminal proceedings, permits or licenses.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

It is the Swedish Police Authority

Swedish Police Authority, Department of Legal Affairs, 981 81 Kiruna, Sweden

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes.

sent by post yearly through the Central Authority (the Swedish Ministry of Justice)

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

We can only send notifications electronically if we have a secure connection.

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Received notifications are stored in our national criminal record if we can, based on the data provided, identify the convicted person as a Swedish national or as a person registered in the Swedish Population Register.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

Sweden must have the following information:

- Surname
- First name
- Gender
- Date of birth
- Nationality
- Relevant offence
- Date of commission of offence
- Length/severity of sentence(s) handed down.
- Date of conviction
- Name of sentencing authority
- Other information that is helpful if available:
 - Swedish ID number
 - Place and country of birth
 - Number of identity document(s)
 - Address
 - Parents (surnames and first names of father and mother)

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

Currently, the Police Authority can store fingerprints for convictions from EU-member states on the basis of the Framework Decision on ECRIS. However, there is no legal ground for the storage in accordance with the 1959 Convention.

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

the Swedish Central Authority, Ministry of Justice, 103 33 Stockholm

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes.

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

No, please see the answer under p. 6. However, we have no difficulty receiving information by electronic means.

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Sweden can only execute requests in relation to natural persons.

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

No, not outside of the EU. For other purposes only the person concerned can request information on him-/herself from the criminal records registry.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

Sweden must have:

- Surname
- First name
- Gender
- Date of birth
- Nationality
- Purpose of the request
- Alias/former name

Other information that is helpful if available:

- Identity number
- Place and country of birth
- Number of identity document(s)
- Address
- Parents (surnames and first names of father and mother)

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

17. We can respond to requests in English, however,
please note our declaration regarding language.

19. SWITZERLAND / SUISSE

1. How do you interpret the notion of “judicial records”, as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

In the context of **article 13** the *judicial record* is the central authority – provided the country has centralized this very authority - for the registration of all criminal convictions in a country. In Switzerland, this authority is the Swiss criminal records. It is part of the federal department of Justice based in Bern. It is, among other things, responsible for the international exchange of notices of information from judicial records based on the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (see Article 22) and bilateral Treaties between individual countries.

In our understanding article 13 says further, that every member party is allowed to ask for extracts from their criminal records if the request comes from a judicial authority and an ongoing criminal proceeding is taking place without the need of a formal request for mutual legal assistance. It offers – or at least it should - a quick way to exchange criminal information's.

In the context of **article 22** *judicial record* means the same as stated previously - the Swiss criminal records. The criminal records from every member party are obliged to transmit convictions of nationals of any other member party. In our understanding, the purpose of this article is to offer every member party a criminal register about their nationals as fully as possible.

2. Which data is contained in your national judicial records?

The Swiss criminal records contain convictions for indictable and summary offences committed by adults on the territory of the confederation as well as Swiss nationals who have been convicted abroad. Convictions for misdemeanours committed by adults only are registered if they satisfy certain conditions. Convictions relating to juveniles are only recorded in the criminal records register where they involve specific penalties (imprisonment, detention, probation, judgments imposing a ban prohibiting the exercising of a profession, judgments prohibiting certain activities from being undertaken, judgments prohibiting contact, and judgments prohibiting the individual from visiting certain locations). Furthermore, the Swiss criminal records contain separate subsequent court decisions. Also parts of the data are the personal data of the convicted person.

3. What use is made of this data?

According to the Swiss criminal law, only certain *authorities* are allowed to see the registered data. The data also can only be used for the scope of the purposes provided by law.

Individual persons can order a so called excerpt or special excerpt from the criminal records about their self.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

Federal Department of Justice and Police
Federal Office of Justice
Criminal register
Bundesrain 20
3003 Bern
vostra@bj.admin.ch
+41 (0) 58 463 09 00

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

Once a week – by post.

No

If not, could you indicate the reasons?

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

It needs to be a secure electronic Mail connection.

No

Comments, if any:

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

If so,

by which means (post, email, etc.)? Post and exchange platforms.

what use do you make of these notifications? Data is updated in our Swiss criminal records if the registration conditions by Swiss law are fulfilled.

No

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

- Identity of the person (**mandatory**: Surname, First Name, Date of birth; *if possible*: Parents Name, Place of birth)
- Dates of the judgment (at least we need **one** of the following dates: Date of issue, opening date or date of the full legal effect)
- Every single committed offences (**mandatory**)
- Time of the offences (**mandatory**)
- Criminal justice authority (**mandatory**)
- Sanctions (**mandatory**)

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

Main Problems:

- Incomplete information according to number 8 (see above)
- Irregular or non-existent exchange
- Non readable Language (for example: Cyrillic script)

Improvements:

- Regular exchange with every member party.
- Standardisation of form (formula) and language

Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

Federal Department of Justice and Police
 Federal Office of Justice
 Criminal register
 Bundesrain 20
 3003 Bern
vostra@bj.admin.ch
 +41 (0) 58 463 09 00

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

About 1800.

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

See answer number 12.

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

No

Comments:

Switzerland does not have criminal records for company's (legal persons). Only natural persons are registered in the Swiss criminal records.

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

No

Comments or examples:

Switzerland does not have any legal basis to answer a non-criminal request.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

Surname

First name

Parents (surnames and first names of father and mother)

Date of birth

Purpose of the request

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

Yes

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

One day, once we received it.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

- Incomplete information according to number 16 (see above)
- No answer - causeless
- Non readable Language (for example: Cyrillic script)
- Difficulties to find a contact person when we encountered problems.
- Waiting period until an answer is made (up to 6 months or even more)

Improvements:

- Function exchange with every member party in a short period of time (1 Month should be the maximum)
- Standardisation of form (formula) and language

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20. UNITED KINGDOM / ROYAUME-UNI

A. Questionnaire for the attention of the members of the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC)

Introduction

At the PC-OC's 75th plenary meeting in November 2018, under the chairmanship of Mr Erik Verbert, it was agreed that there was a need to obtain further information concerning national practices in terms of application of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (the "Convention"), in particular Article 13 relating to requests for extracts from judicial records and Article 22 relating to the transmission of notifications of convictions.

Preliminary information

European Union member states send one another notifications of convictions of their nationals and requests for extracts from judicial records through the European Criminal Records Information System (ECRIS). This questionnaire therefore only concerns the transmission of notifications of convictions and requests for extracts from judicial records outside ECRIS, under the Convention.

Preliminary questions

1. How do you interpret the notion of "judicial records", as referred to in Articles 13 and 22 of the Convention in your jurisdiction?

Our interpretation is that judicial records includes records involving the courts or judges. This will broadly include copies of judgments, details of offences - including modus operandi, and criminal conviction information which are recorded by courts or stored in that signatories' criminal record.

In this case: 'conviction' means any final decision of a criminal court against a natural person in respect of a criminal offence, to the extent these decisions are entered in the criminal record; and, 'criminal record' means the national register or registers recording convictions in accordance with national law.

2. Which data is contained in your national judicial records?

Conviction information is held on the Police National Computer (PNC) for England and Wales, on the Criminal History System for Scotland, Causeway for Northern Ireland, and on Gibraltar's criminal register. These systems store a range of police intelligence data including convictions and details of offences, and cautions, reprimands and warnings. We will not share information which does not involve the courts or judges under Articles 13 and 22, for example, we will not share cautions, reprimands or warnings. It is the courts who hold copies of judgments handed down to individuals.

3. What use is made of this data?

This data can be accessed by the police for criminal investigation and offender management purposes, and by any agencies that have been granted access to the criminal register. These

include disclosure agencies who can use the information to assess an individual's suitability for a particular job, as well as other non-police organisations with a legitimate business need to access the information.

Article 22

4. Which authority in your national system is responsible for applying this provision relating to the exchange of notifications of final convictions between States Parties and what are its contact details?

The ACRO Criminal Records Office is the central authority for ECRIS and carries out the same obligations as the conduit for MLA requests under the Convention, as it has access to the UK's national criminal register.

ACRO
PO Box 481
Fareham
Hampshire PO14 9FS
United Kingdom
E-mail: ukca@acro.pnn.police.uk

5. Does your State send notifications of convictions to the other States Parties pursuant to Article 22 of the Convention?

Yes

If so, how often and by which means (post, email, etc.)?

ACRO sends notifications via INTERPOL i24/7 and via secure email. Although the Convention mandates that notifications of convictions should be shared at least once a year, ACRO sends notifications to other Signatory States much more frequently, indeed they do so as frequently as is required under ECRIS when dealing with EUMS.

6. If you do not already do so, would you consider sending and/or receiving such notifications of convictions electronically?

Yes

Comments, if any:

The UK fully supports the sending and receiving of notifications electronically. ACRO has access to the UK's national criminal register and is an INTERPOL sub-bureau able to undertake criminal records exchange. Alternatively, ACRO can send and receive notifications via secure email channels.

7. Does your State receive notifications of convictions from other States Parties pursuant to Article 22 of the Convention?

Yes

If so,

by which means (post, email, etc.)?

We receive notifications via i24/7, via secure web portals, secure email, and occasionally by post.

What use do you make of these notifications?

These notifications are added to the PNC where they can be accessed not only by the police, but also by any agencies that have been granted access to the criminal register. These include disclosure agencies who can use the information to assess an individual's suitability for a particular job, as well as other non-police organisations with a legitimate business need to access the information. Organisations that would come under this category would include the Home Office, HM Prison Service, HM Revenue and Customs, Ministry of Justice, and UK Visas and Immigration, amongst others.

8. Which information must you receive to enable you to process a notification of conviction transmitted by a State Party to the Convention?

We will require a name, date of birth, and gender as a minimum requirement.

9. What are the problems encountered in the application of Article 22 of the Convention and what improvements would you propose?

We would welcome the inclusion of fingerprints with the notification in order to verify identity.

Article 13

10. Which authority in your national system is responsible for applying this provision relating to the transmission of extracts from judicial records and what are its contact details?

The ACRO Criminal Records Office.

11. How many requests for judicial record extracts did this authority receive on the basis of Article 13 during 2018?

EU Countries via ECRIS (calendar year 2018):

Requests In for criminal proceedings– 8,051

Non-EU countries (calendar year 2018):

Requests In for criminal proceedings– 2,442

12. If requests were made to you, did your State actually send the requesting States Parties the judicial record extracts requested under Article 13 of the Convention?

Yes

13. If you do not already do so, would you consider sending and/or receiving such extracts electronically?

Yes

The UK fully supports the sending and receiving of requests electronically. ACRO has access to the UK's national criminal register(s) and is an INTERPOL sub-bureau able to

undertake some criminal records exchange outside of the EU system with EU MS (ECRIS). Alternatively, ACRO can send and receive requests via secure email channels.

14. Are you in a position to execute a request based on Article 13 paragraphs 1 and 2 concerning legal persons?

Yes

15. Does your domestic legislation allow you to respond to a request for a judicial record extract on grounds other than for criminal proceedings (for example, in connection with recruitment to a profession involving contact with minors)?

Yes

The UK's domestic legislation allows for responses to requests for purposes outside of criminal proceedings. ACRO currently fulfil requests as per Article 10 of the EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography (Directive 2011/92/EU) as well as responding to requests for non-criminal proceedings from the person concerned for information on their own criminal record. The UK and ACRO will also seek to respond to all requests where a risk to the public is identified.

16. Which information must you receive to enable you to process a request for a judicial record extract on the basis of Article 13 of the 1959 Convention?

- Surname
- First name
- Alias (if held)
- Gender
- Country of birth (would like to have)
- Place of birth (would like to have)
- Date of birth
- Nationality (would like to have)
- Purpose of the request
- Other: (would like to have fingerprints if available in order to verify identity)

17. Are you willing to respond to requests for judicial record extracts under Article 13 of the 1959 Convention drafted in one of the Council of Europe's official languages (English and French)?

The UK can response to requests sent in English and all responses to requests will be sent in English.

18. How much time would you need to respond to a request for judicial record extracts under Article 13?

The turnaround time is approximately 10 working days.

19. What are the problems encountered in the application of Article 13 of the Convention and what improvements would you propose?

Currently, there is no real obligation to respond nor are there set timescales or defined processes for send or replying to requests under Article 13. The inclusion of a mandate to respond within defined time scales, standardisation of responses and the obligation to send

requests and responses electronically, where possible, would assist in making the application of Article 13 more timely and less administratively burdensome.

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