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**Regional Project**

# **JUDICIAL CO-OPERATION AGAINST CORRUPTION AND ORGANISED CRIME IN SOUTH-EASTERN EUROPE**

## **CO-OPERATION MANUAL** **(updated as of May 2010)**

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<sup>1</sup> All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

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# 1 INTRODUCTION

This is an updated version of the Manual on Judicial Co-operation prepared in 2004 within the framework of the Council of Europe Programme against Corruption and Organised Crime in South-Eastern Europe (PACO), and PACO Networking Project in particular, as a means for increasing the efficiency of co-operation between the contact points and officials responsible for mutual legal assistance and international co-operation in criminal matters in 10 countries of the region.

It is intended to be a practical tool for those involved in the judicial co-operation, that is, judges, prosecutors, police officers, officials of ministries of justice and interior. Its aim is to facilitate judicial co-operation not only in South-Eastern Europe, but also beyond the boundaries of the region. It can also serve as a tool for training officials in mutual legal assistance and international co-operation in criminal matters.

The present version was produced in 2009-2010 within the framework of the European Union/Council of Europe Joint Regional Project "Support to Prosecutors' Network in South-Eastern Europe". Consequently, it contains information only in respect of the seven areas that participated in the project (i.e. Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and "the former Yugoslav Republic of Macedonia").

The first part of the Manual contains information on procedures for extradition, instituting and transferring proceedings, mutual legal assistance, transfer of sentenced persons and validity of foreign judgments, along with contact details of competent authorities and relevant contact points. The second part of the Manual contains information on the state of signatures and ratifications with respect to European and other international instruments.<sup>2</sup>, a list of bilateral treaties between them as well as relevant extracts from the national legislation of the project areas.

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<sup>2</sup> For up-to-date information on the European legal instruments referred to in the present Manual, please see the official Web-site of the Council of Europe Treaty Office at: <http://conventions.coe.int/>

## 2 INFORMATION BY COUNTRY/PROJECT AREA

### 2.1 ALBANIA

#### 2.1.1 Extradition procedures

##### (1) LEGAL BASIS

###### i. Multilateral treaties and conventions

- European Convention on Extradition (ETS 024)
- Additional Protocol to the European Convention on Extradition (ETS 086)
- Second Additional Protocol to the European Convention on Extradition (ETS 098)

###### ii. Bilateral treaties

- **Croatia:** Agreement on extradition (1926)
  - **Bosnia-Herzegovina:** Agreement on extradition (1928)
  - **Romania:** Agreement on legal assistance in civil, family and criminal matters (1961).
  - **Slovenia:** Agreement on extradition (1926).
  - **“the former Yugoslav Republic of Macedonia”:** Agreement on extradition (1998).
- bilateral treaties cited in the text, with Croatia (1926) and Bosnia Herzegovina (1928), are not *de facto* applied, procedures are currently based on the European Convention on Extradition.

###### iii. National legislation

- Article 116/1 of the Constitution of the Republic of Albania provides that after the Constitution legal force is given to all international ratified agreements which in case of “legal conflict” prevail over the laws and normative acts of the Council of Ministers.
- Article 122/2 of the Constitution of the Republic of Albania provides that any international agreement where Albania is a party prevails over domestic law.
- Albanian Criminal Procedure Code (hereinafter CPC): Title X – Jurisdictional Relations with Foreign Authorities (Articles 488 to 504)

##### (2) DETENTION OF THE REQUESTED PERSON

###### i. Provisional arrest for extradition (conditions and channel of communication)

###### ***Upon request***

According to Article 495 of the CPC, the Albanian judicial authorities can execute an arrest request submitted by a foreign authority for extradition purposes and at the same time can seize the relevant materials which may be considered to be evidence related.

According to Article 16 of ETS 024, it is possible to conduct the provisional arrest upon request of the members parties to this convention. Such arrangements could be done through INTERPOL.

###### ***Without request***

As indicated in Article 495 of the CPC, no arrest can be made without the submission of a specific request.

###### ii. Arrest for extradition (conditions and channel of communication)

###### ***Obligatory***

There are no conditions/channels of communications with any country.

###### ***Non-obligatory***

According to ETS 024 with all the countries.

### **(3) CHANNELS OF COMMUNICATION FOR EXTRADITION REQUESTS**

The channel of communication is the Ministry of Justice.

The use of the diplomatic channel is not excluded, but at the same time not the preferred nor advised one.

### **(4) FORM AND CONTENT OF REQUESTS FOR EXTRADITION**

- see Article 12 of ETS 024
- see Article 489 paragraph 2 of the Albanian CPC

The request for extradition must have attached the following:

- a) the copy of the court ruling/sentence with imprisonment or the criminal proceedings documented paper;
- b) a report on the charges against the person who is the subject of extradition, indicating the time and the place of the commission of the offence and its legal qualification;
- c) the relevant legal provisions applicable to the specific case, by indicating whether for the criminal offence/offender subject to extradition foreign country provides death penalty;
- d) personal data and any other possible information which could assist to better define the identity and the citizenship of the person subject to extradition.

### **(5) GROUNDS FOR REFUSAL OF AN EXTRADITION REQUEST**

#### **i. Mandatory grounds**

- see Articles 3 to 11 of ETS 024
- see Article 491 of the Albanian CPC

Extradition may not be granted:

- a) for an offence of a political nature or when it results that it is requested for political reasons.
- b) when there are grounds to think that the person subject to extradition shall be subjected to persecution or discrimination due to race, religion, sex, citizenship, language, political belief, personal or social state or cruel, inhuman or degrading punishment or treatment or acts which constitute violation of fundamental human rights.
- c) when the person subject to the request for extradition has committed a criminal offence in Albania.
- d) when he is being tried or has been tried in Albania regardless the fact that the criminal offence has been committed abroad.
- e) when the criminal offence is not provided as such by the Albanian legislation;
- f) the Albanian state has provided an amnesty for this offence;
- g) when the requested person is Albanian citizen and there is no agreement otherwise providing;
- h) when the law of the requesting state does not provide anymore the prosecution or the punishment for the same criminal act due to the prescription.

#### **ii. Optional grounds**

According to Article 489 paragraphs 3 and 4 of the Albanian criminal procedural law, the optional grounds are the following:

- a) When several requests for extradition compete, the Ministry of Justice shall be the authority which decides on the order of the requests review. During the request review, the Ministry of Justice shall take into consideration all circumstances of the case and particularly the date of the reception of the request, the importance and the place where the criminal offence is committed, the citizenship and the domicile of the person subject to request, as well as the possibility of a re-extradition by the requesting country.
- b) Where there is only once criminal offence which is being subject to extradition request by several countries, the extradition shall be granted to the country whereas the criminal offence is against to, or to the country on the territory of which the where the criminal offence has been committed.

### **(6) ISSUING AND EXECUTING AN EXTRADITION REQUEST**

#### **i. Competencies of the national authorities involved in the procedure**

##### ***Outgoing requests***

According to Article 504 of the Criminal Procedure Code, the steps of the procedure on outgoing requests are the following:

- Notification is issued by any relevant District prosecutor to the Ministry of Justice
- The Ministry of Justice is the authority which prepares and issues the request by forwarding it through the diplomatic channels to the respective countries.

De facto, the following procedures are used in order to make the procedures more practical:

- The district prosecutor is the authority which in fact notifies the Office of NBC INTERPOL
- NCB INTERPOL makes the INTERPOL diffusion for "Wanted person"

### ***Incoming requests***

As indicated by Article 492 of the Criminal Procedure Code:

The Ministry of Justice, when receiving a request for extradition by a foreign country, shall forward it to the General Prosecutor's Office, unless it does not reject it prima facie.

The relevant District Prosecutor's Office is the authority who shall execute the extradition procedures. If an extradition request is rejected by a court decision, then the request cannot be executed.

#### **ii. Procedure**

##### ***Rule of speciality***

See Article 14 of ETS 024 and Article 490 of the Albanian CPC.

##### ***Simplified extradition procedure***

Possible consent of the extradited person asked under Article 492 paragraph 2 of the CPC.

##### ***Surrender of the person***

- see Article 18 of ETS 024
- see Article 499 of the Albanian CPC which provides that:

The Ministry of Justice communicates the decision to the requesting state and, when this is favourable, the place of the surrender and the date by which the procedures can take place. The surrender's handover shall take not more than 15 days, from the set date and can be extended for another 15 days upon a motivated request from the requesting state.

The decision of extradition shall be void and the person to be extradited shall be released in case when the state which could bring the request does not act within the set period of time, in order to receive the requested person.

##### ***Postponed or conditional surrender***

- see Article 19 paragraph 1 of ETS 024.
- see Article 500 of the Albanian CPC.

The execution of extradition is suspended when the person subject to extradition will be tried in the territory of the Albanian state and must serve the sentence for the punished criminal offences committed before or after the one for whom he is being subject to extradition.

Also, the Minister of Justice, after hearing the grounds given from the Albanian authorities which are in charge of the criminal proceedings, can order the handover of the temporary extradition subject by determining the time (the length of the period) and the modus operandi. The Ministry of Justice may agree that the remaining time to serve the sentence can be served on the territory of the requesting state.

##### ***Extradition procedures in Albania***

- Request arrives at the Ministry of Justice
- The Ministry of Justice forwards the request for execution to the General Prosecutor's Office.
- The competent District Prosecutor's Office prepares the files and submits the request to the District Court as the competent authority to render the decision in favour or not of the extradition.
- Precautionary measures (including the arrest ) are taken, if considered necessary.
- The Minister of Justice shall decide on the extradition within 30 days from the date the decision of the court has become final and is communicated to the requesting state.

**(7) SPECIAL RULES ON NATIONALS**

**i. Extradition of nationals**

Allowed only when a bilateral agreement has a specific provision in this respect.

**ii. Institution of criminal proceedings against non-extradited nationals**

According to Article 6 of the Albanian Criminal Code, an Albanian citizen shall be criminally responsible for crimes committed in another country, such actions constitute a criminal offence according to the Albanian Criminal code.

**(8) LANGUAGE OF THE REQUEST/TRANSLATION**

It is preferable that the Albanian version is provided for all documents forwarded during such proceedings.



## 2.1.2 Requests for instituting proceedings & transfer of proceedings

### (9) REQUESTS FOR INSTITUTING CRIMINAL PROCEEDINGS

#### i. Legal basis

##### ***Multilateral treaties and conventions***

- See the European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073) and the declarations and reservations contained in the instrument of ratification.

##### ***Bilateral treaties***

None. European Convention on the Transfer of Proceedings in Criminal Matters is directly applicable (Law No. 8497, dated 10.06.1999 "On Ratification of the Convention of Council of Europe "On transfer of proceedings in criminal matters").

##### ***National legislation***

Article 6 of the Albanian Criminal Code provides that Albanian citizens, either generally subject to extradition, are responsible for any crime committed abroad. If an official notification arrives at the Albanian authorities (namely the Ministry of Justice), and as such is considered even the request for extradition, legally the Albanian authorities are obliged to start the criminal prosecution against the requested person.

#### ii. Conditions

- See the European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073) and the declarations and reservations contained in the instrument of ratification.

#### iii. Procedure

- See the European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073) and the declarations and reservations contained in the instrument of ratification.

### (10) TRANSFER OF PROCEEDINGS

#### i. Legal basis

##### ***Multilateral treaties and conventions***

- See the European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073) and the declarations and reservations contained in the instrument of ratification.

##### ***Bilateral treaties***

None.

##### ***National legislation***

None.

#### ii. Conditions

- See the European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073) and the declarations and reservations contained in the instrument of ratification.

#### iii. Procedure

- See the European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073) and the declarations and reservations contained in the instrument of ratification

## 2.1.3 Procedures for mutual legal assistance

### (11) LETTERS ROGATORY

#### i. Legal basis

##### **Multilateral treaties and conventions**

- European Convention on Mutual Assistance in Criminal Matters (ETS 030)
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 099)
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182)

##### **Bilateral treaties**

Agreement between Albania and “the former Yugoslav Republic of Macedonia” on mutual legal assistance on criminal and civil law (1998).

##### **National legislation**

See the Albanian CPC: Chapter II, Section I – Letters Rogatory (Articles 505 to 511).

#### ii. Channels of communication (sending, receiving and returning of requests)

##### **Through central authorities**

The Ministry of Justice (Department of International Treaties and Jurisdictional Relations) is the judicial authority within the meaning of Article 24 of ETS 030.

##### **Through diplomatic channels**

The use of the diplomatic channel is not excluded, but at the same time not recommended.

##### **Through direct contacts**

According to the Declaration contained in the instrument of ratification deposited on 4 April 2000: the Albanian legislation provides that in accordance with Article 15 paragraph 6, a copy of all requests for assistance which are communicated directly between judicial authorities as well as accompanying acts shall be transmitted at the same time to its Ministry of Justice.

According to Article 509 of the Albanian CPC, for urgent case, the proceeding authority (General Prosecutor's Office) can decide to send directly the letter rogatory to the requesting state, while informing at the same time the Minister of Justice.

#### iii. Form and content of requests for mutual legal assistance

##### **Information to be included in a request**

Under Article 14 of ETS 030, the requests for mutual assistance shall indicate as follows:

- a) the authority making the request,
- b) the object (purpose) of and the reason for the request,
- c) where possible, the identity and the nationality of the person concerned – against whom criminal proceedings have been initiated
- d) legal qualification of the investigated offence, a copy of the text of the Penal code, which envisages the offence and a summary of the facts.
- e) the explicit list of the requested procedural actions

##### **List of measures which may be provided**

Measures possible include:	Legal basis
Hearings (including interrogation and confrontation, identification of persons and objects)	Yes: according to ETS 030 and Article 256 of the CPC
Transfer of persons deprived of liberty for the purpose of hearing	Yes. - Article 505 of the CPC - Article 11 and 15 of ETS 030

Search and seizure of evidence	Yes. - Article 5 of ETS 030 - Albanian declaration to Article 5: <i>"the execution of letters rogatory for search or seizure of property shall be dependent on the conditions stipulated in Article 5, paragraph 1, letters a and c"</i> . - Articles 204 to 210 of the CPC
Search, identification, freezing, seizure and confiscation of instrumentalities and proceeds of crime	Yes. - ETS 141 - Articles 274 to 276 of the CPC
Use of special investigative means:	Yes. - ETS 30 - Articles 221 to 226 of the CPC
- Interception of telecommunications	Is legally possible but not technically, at present for mobile phones only.
- Bugging	Yes. - Articles 221 to 226 of the CPC
- Observation	Yes. - Article 30 of the CPC
- Order to produce specific documents	Yes. - Article 224 of the CPC
- Undercover operation	Yes. Law n°8722 on combating trafficking in drugs (26.12.2000).
- Controlled delivery	Yes. Law n°8722 on combating trafficking in drugs (26.12.2000).
- Feigned giving/accepting	Not specifically regulated by law.

**Specific requirements: dual criminality/reciprocity**

Both are required.

**Language of the request/translation**

The Albanian language is preferred, otherwise English would be accepted.

**iv. Grounds for refusal of an assistance request**

- See Article 2 of ETS 030.
- See Article 505 paragraph 2 of the CPC.

The Ministry of Justice does not accept (rejects the execution) the letter rogatory when:

- a) it is certain that the request proceedings actions are expressly prohibited by law or in contradiction with the fundamental principles of the rule of law.
- b) there are well – grounded reasons to think that there could be considerations regarding race, religion, sex, nationality, language, political beliefs or the social state which may cause a negative influence on the performance of the process,
- c) it is not certain that the defendant has expressed freely his consent for the rogatory letter; and
- d) if the requesting state does not give sufficient guarantee for those that are subject of the letter rogatory and are summoned as witness, expert or a defendant before a foreign judicial authority.

**v. Issuing and executing a request****Competencies of the national authorities**

The authorities which can issue a letter rogatory are the courts and the prosecution offices. They can send letters directly to the corresponding authorities or via the Albanian Ministry of Justice (Article 509 of the CPC).

The authorities which execute a letter rogatory are the prosecution offices and courts, following the acceptance given by the Albanian Ministry of Justice (Article 506 to 508 of the CPC).

**Procedure**

See Chapter V of ETS 030 and Article 507 of the CPC.

Requests for legal assistance are forwarded to the General Prosecutor's Office (Directory of Foreign Affairs) via :

- Ministry of Foreign Affairs (not used in practice)
- Ministry of Justice (usual practice): Article 15/1 of ETS 030.
- Ministry of Public Order (Office of NBC INTERPOL)
- Direct channels of communication (in urgent cases)

**vi. Costs of assistance**

All the expenses for the implementation of these procedures (execution of letters rogatory) will be covered by the Albanian part.

**(12) REQUESTS FOR SERVING OF SUMMONSES, JUDGMENTS AND OTHER PROCEDURAL DOCUMENTS**

Article 7 of ETS 030 applies.

**(13) EXCHANGE OF CRIMINAL RECORDS**

Article 13 of ETS 030 applies.

## **2.1.4 Transfer of sentenced persons & validity of foreign judgments**

### **(14) TRANSFER OF SENTENCED PERSONS**

#### **i. Legal basis**

- See the European Convention on the Transfer of Sentenced Persons (ETS 112).
- The introduced legal basis is comprehensive and refers to the European Convention “ On transfer of sentenced persons” and “On invalidity of criminal international judgments” and articles of the Code of Criminal Procedure concerning the enforcement of foreign criminal judgments (Law no. 8499, dated 10.06.1999 “On ratification of the European Convention “ On transfer of sentenced persons”, Law No. 8497, dated 10.06.1999 “On ratification of the European Convention “ On transfer of criminal proceedings” and Section I- Chapter III- Code of Criminal Procedure).

#### **ii. Conditions**

Article 3 of ETS 112 applies.

#### **iii. Procedures**

See Articles 5 to 15 of ETS 112.

### **(15) VALIDITY OF FOREIGN JUDGMENTS**

#### **i. Legal basis**

- The European Convention on the International Validity of Foreign Judgments (ETS 070)
- Articles 512 to 518 of the CPC.

#### **ii. Conditions**

- See Article 514 of the CPC

The sentence of a foreign court may not be recognised when:

- a) the sentence has not become final according to the laws of the state in which it has been rendered,
- b) the sentence contains provisions which run against the principles of the rule of law of the Albanian state,
- c) the sentence has not been rendered by an independent and impartial court or the defendant has been not cited to appeal before the trial or has not been recognised the right to be questioned in a language that he understands and to be assisted by a defence lawyer,
- d) there are grounded reasons to think that the proceedings have been influenced by considerations regarding race, religion, sex, language or political beliefs,
- e) the fact for which is rendered the sentence is not provided as a criminal offence by the Albanian law,
- f) the Albanian state has rendered a final decision or a criminal proceeding is in course for the same fact and against the same person.

### 2.1.5 Contact details of competent authorities and list of contact points

Ministry of Justice	<b>Ms. Najada RAMA</b> <i>Specialist</i> Department of International Treaties and Jurisdiction Relations Ministry of Justice of Albania Blvd. " Zog I", Tirana – Albania  Tel/ Fax + (355) 4 22 83 59 E-mail: najadarama@yahoo.com	Handles all respective issues related to actions referred in this Manual section.          Languages spoken: English, French, Romanian.
General Prosecutor's Office	<b>Mr. Ardian VISHA</b> <i>Director</i> Department of Foreign Affairs General Prosecutor's Office Rr. Qemal Stafa Tirana – Albania  Tel/Fax + (355) 4 23 52 32 Mob + (355) 69 20 90 423 E-mail: v_ardi@hotmail.com E-mail2: foreign_depart@hotmail.com	Handles all respective issues related to actions referred in this Manual section.          Languages spoken: English, Italian,
Ministry of Public Order	<b>Mr. Artan BAJRAKTARI</b> <i>Head of office</i> National Central Bureau of INTERPOL – Directorate of Criminal Police Ministry of Public Order Blvd. " Deshmoret e Kombit" Tirana- Albania  Tel + (355) 4 36 27 93 Fax + (355) 4 36 51 60 E-mail: arba_al@yahoo.com E-mail 2: intmrp@albanaonline.net	Handles all respective issues related to actions referred in this Manual section.          Languages spoken: English, Italian, Serbo-Croatian.
Ministry of Foreign Affairs	<b>Ms. Ledia HYSI</b> <i>Director</i> Directorate of legal, Consular and Treaty Affairs Ministry of Foreign Affairs Blvd. " Zog 1" Tirana – Albania  Tel + (355) 4 36 46 74 Fax + (355) 4 36 46 85	Handles all respective issues related to actions referred in this Manual section.          Languages spoken: English, Italian, German

## 2.2 BOSNIA AND HERZEGOVINA

### 2.2.1 Extradition procedures

#### (1) LEGAL BASIS

##### i. Multilateral treaties and conventions

- European Convention on Extradition (ETS 024)
- Additional Protocol to the European Convention on Extradition (ETS 086)
- Second Additional Protocol to the European Convention on Extradition (ETS 098)
- United Nations Convention Against Corruption

##### ii. Bilateral treaties

Article 2 in Annex II of the Constitution of Bosnia and Herzegovina (also BiH) provides that all laws, regulations and judicial rules which are in force on the territory of Bosnia and Herzegovina at the time of coming into force of the Constitution of Bosnia and Herzegovina remain in effect to the extent that they are not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina.

According to the Law on Overtaking and Application of Federal Laws, which is applied in Bosnia and Herzegovina as a Republic Law ("Official Gazette of Bosnia and Herzegovina" No. 2/92 and 13/94), Bosnia and Herzegovina overtook also the Law on Conclusion and Execution of International agreements of the Socialist Federal Republic of Yugoslavia (SFRY), as well as the former federal laws referring to the ratification of international contracts and agreements. In that way, the consistent part of the legal system in Bosnia and Herzegovina includes international agreements regarding international legal assistance and extradition, which the SFRY had concluded with other countries.

With the member States – signatories to ETS 024:

- **Albania:** Agreement on extradition (1928)
- **Bulgaria :** Treaty between the Republic of Bulgaria and the Socialist Federal Republic of Yugoslavia on mutual legal assistance (26.01.1957)
- **Croatia:** Treaty on legal assistance on civil and criminal matters (26.02.1996)
- **Hungary:** Treaty on mutual legal assistance between Hungary and the Socialist Federal Republic of Yugoslavia (Law Decree No. 1 of 1969, modified by Decree No. 1 of 1988)
- **Romania :** Treaty between Romania and the Socialist Federal Republic of Yugoslavia (Belgrade, 18.10.1960) and its additional protocol (21.01.1972)
- **"The former Yugoslav Republic of Macedonia":** Extradition Agreement (Official Gazette of Bosnia and Herzegovina 14/2006).
- **Slovenia:** Extradition Agreement (Official Gazette of Bosnia and Herzegovina 12/2005);

##### iii. National legislation

- Article III of the Constitution of Bosnia and Herzegovina paragraph 1(g) provides that it is within the responsibility of the institutions of Bosnia and Herzegovina to carry out the international and inter-entity criminal law enforcement, including relations with INTERPOL.
- Criminal Procedure Code of BiH, enacted by decision of the High Representative of 24.01.2003): Chapter XXXI – Procedure to extradite suspects or accused and convicted persons, articles 414 -431
- Article 407 of the Criminal Procedure Code of Bosnia and Herzegovina (CPC) provides for mutual criminal assistance under the provisions of that law unless otherwise provided by law of Bosnia and Herzegovina or by an international agreement.

#### (2) DETENTION OF THE REQUESTED PERSON

##### i. Provisional arrest for extradition (conditions and channel of communication)

##### *Upon request*

- **Albania:** possible according to article 9 of the bilateral treaty on extradition (1928)
- **Bulgaria :** possible according to article 75 paragraphs 1-4 of the treaty between the Republic of Bulgaria and the Socialist Federal Republic of Yugoslavia on mutual legal assistance (26.01.1957)
- **Croatia:** possible according to the Treaty on legal assistance on civil and criminal matters (26.02.1996)

- **Hungary:** possible according to article 93 of the Treaty on mutual legal assistance between Hungary and the Socialist Federal Republic of Yugoslavia (Law Decree No. 1 of 1969, modified by Decree No. 1 of 1988)
- **Romania :** possible according to article 73 of the treaty between Romania and the Socialist Federal Republic of Yugoslavia (Belgrade, 18.10.1960)

If there is no treaty concluded, Article 420 of the Criminal Procedure Code of the BiH applies.

For the states parties to ETS 024: possible according to article 16, usually through the Office for Cooperation with INTERPOL (within the Ministry of Security of Bosnia and Herzegovina).

#### ***Without request***

It is possible with the following countries, on the basis of the provisions of the bilateral treaty only:

- **Bulgaria :** possible according to article 75 paragraph 5 of the treaty between the Republic of Bulgaria and the Socialist Federal Republic of Yugoslavia on mutual legal assistance (26.01.1957)
- **Croatia:** possible according to the Treaty on legal assistance on civil and criminal matters (26.02.1996)
- **Hungary:** possible according to article 93 paragraph 4 of the Treaty on mutual legal assistance between Hungary and the Socialist Federal Republic of Yugoslavia (Law Decree No. 1 of 1969, modified by Decree No. 1 of 1988)
- **Romania :** possible according to article 73 paragraph 2 of the treaty between Romania and the Socialist Federal Republic of Yugoslavia (Belgrade, 18.10.1960)

For the states parties to ETS 024: possible according to article 16, paragraph 4, sub-paragraph 3.

Other countries: possible according to article 418 and article 132 of the Criminal Procedure Code of Bosnia and Herzegovina.

#### **ii. Arrest for extradition (conditions and channel of communication)**

##### ***Obligatory***

For the states parties to ETS 024: possible according to article 16.

For all countries, possible according to article 420 of the CPC of Bosnia and Herzegovina.

##### ***Non-obligatory***

For all countries, possible according to article 418 and article 132 of the CPC of Bosnia and Herzegovina.

### **(3) CHANNELS OF COMMUNICATION FOR EXTRADITION REQUESTS**

The Ministry of Justice of Bosnia and Herzegovina is the central authority for sending and receiving requests for mutual legal assistance.

Urgent requests are sent to the INTERPOL.

Some bilateral agreements provide for diplomatic channel of communication.

- **Albania:** diplomatic channel according to article 8 of the Agreement on extradition (1928)
- **Bulgaria :** diplomatic channel according to article 73 of the Treaty between the Republic of Bulgaria and the Socialist Federal Republic of Yugoslavia on mutual legal assistance (26.01.1957)
- **Croatia:** (to be completed)
- **Hungary:** through central authorities according to article 91 of the Treaty on mutual legal assistance between Hungary and the Socialist Federal Republic of Yugoslavia (Law Decree No. 1 of 1969, modified by Decree No. 1 of 1988)
- **Romania :** diplomatic channel according to article 70 of the Treaty between Romania and the Socialist Federal Republic of Yugoslavia (Belgrade, 18.10.1960) and its additional protocol (21.01.1972) If there is no treaty, both incoming (article 416 of the CPC) and outgoing requests (article 428 paragraph 2 of the CPC) are to be submitted through diplomatic channels.

### **(4) FORM AND CONTENT OF REQUESTS FOR EXTRADITION**

For the Parties to the ETS 024: according to article 12.

A request may also be submitted according to article 416, paragraph 3 (a-g) of the CPC of Bosnia and Herzegovina.



## (5) CONDITIONS FOR GRANTING EXTRADITION

See article 2 of ETS 024 in conjunction with article 415 of the CPC of Bosnia and Herzegovina.

In accordance with bilateral agreements (but not cumulatively): the principle of dual identity of the norm (the offence is recognised as an offence in both countries), the principle of minimum punishment and finality of the judgment: dual criminality and minimum punishment.

Dual criminality:

- **Albania:** article 2 of the Agreement on extradition (1928)
- **Bulgaria :** article 67 of the Treaty between the Republic of Bulgaria and the Socialist Federal Republic of Yugoslavia on mutual legal assistance (26.01.1957)
- **Croatia:** to be completed
- **Hungary:** article 85 of the Treaty on mutual legal assistance between Hungary and the Socialist Federal Republic of Yugoslavia (Law Decree No. 1 of 1969, modified by Decree No. 1 of 1988)
- **Romania :** article 68 of the Treaty between Romania and the Socialist Federal Republic of Yugoslavia (Belgrade, 18.10.1960) and its additional protocol (21.01.1972)

If there is no treaty, dual criminality is required according to article 415 paragraph (1) point d of the CPC.

Possible or imposed punishment:

- **Albania:** article 2 of the Agreement on extradition (1928)
- **Bulgaria :** article 67 of the Treaty between the Republic of Bulgaria and the Socialist Federal Republic of Yugoslavia on mutual legal assistance (26.01.1957)
- **Hungary:** article 85 and 86 of the Treaty on mutual legal assistance between Hungary and the Socialist Federal Republic of Yugoslavia (Law Decree No. 1 of 1969, modified by Decree No. 1 of 1988)
- **Romania :** article 68 of the Treaty between Romania and the Socialist Federal Republic of Yugoslavia (Belgrade, 18.10.1960) and its additional protocol (21.01.1972)

## (6) GROUNDS FOR REFUSAL OF AN EXTRADITION REQUEST

See ETS 024 in conjunction with article 415 of the CPC of Bosnia and Herzegovina.

### i. Mandatory grounds

- **Albania:** own national (article 3 of the bilateral treaty), political offence, military offence, criminal offences through press and criminal offences that are prosecuted by individual (article 4 of the bilateral treaty), lapse of time (article 6 of the bilateral treaty)
- **Bulgaria :** own national (article 70a of the bilateral treaty), political offence( article 71 of the bilateral treaty), military offence (article 72 of the bilateral treaty), final judgment (article 70b of the bilateral treaty), lapse of time (article 70c of the bilateral treaty)
- **Croatia:** (to be completed)
- **Hungary:** own national, final judgment, lapse of time, amnesty (article 88 of the bilateral treaty), political offence (article 89 of the treaty), military offence and offence committed through press (article 90 of the bilateral treaty).
- **Romania :** political offence, military offence, offence through press, own national, place of commission of the offence, lapse of time, final judgment (article 69 of the bilateral treaty)
- **“The former Yugoslav Republic of Macedonia”:** asylum and own nationals (article 11 of the bilateral treaty), political offence, military offence, non-offence, lapse of time, pending proceedings for the same offence (article 10, 11, 12 and 13 of the bilateral treaty).
- **Slovenia:** asylum and own nationals (article 11 of the bilateral treaty), political offence, military offence, non-offence, lapse of time, *ne bis in idem*, pending proceedings for the same offence (article 12 of the bilateral treaty).

In addition, Bosnia and Herzegovina will deny extradition according to article 415 of the Criminal Procedure Code when:

- a) a person whose extradition has been requested is a citizen of Bosnia and Herzegovina;
- b) a person, whose extradition has been requested, has been granted an asylum in Bosnia and Herzegovina, or that the person in question is in the process of seeking asylum in Bosnia and Herzegovina;
- c) the offence on the basis of which the extradition has been requested was committed in the territory of Bosnia and Herzegovina, against it or its citizen;
- d) the offence on the basis of which the extradition has been requested does not constitute a criminal offence under the domestic legislation as well as under the legislation of the state in which it was committed;

- e) that the offence on the basis of which the extradition has been requested is a political or military criminal offence;
- f) that the statute of limitation applies with respect to criminal prosecution or execution of the sentence under the domestic legislation before the alien is taken into custody or examined as a suspect or accused,
- g) that the alien whose extradition has been requested has been convicted for the same criminal offence by a domestic Court or that he has been validly released by the domestic Court with regard to the same offence, unless conditions have been obtained for a renewal of the criminal proceedings as provided for by this Code, or that criminal proceedings were instituted in Bosnia and Herzegovina against the alien for the same criminal offence, and if the proceedings were instituted for an offence committed against a citizen of Bosnia and Herzegovina it is required that compensation insurance was not deposited for the claim under property law of the injured party;
- h) the identity of the person whose extradition has been requested is not verified;
- i) that there are not sufficient evidence for a suspicion that the alien whose extradition has been requested committed a criminal offence or that there is no valid verdict;
- j) the extradition of an alien has been requested for the following purposes: criminal prosecution or punishment on the grounds of his race, sex, national or ethnic origin, religious belief or political views

## ii. Optional grounds

- **Albania:** place of commission of the offence (article 4 paragraph 2 of the bilateral treaty)
- **Bulgaria:** pending proceedings for the same offence (article 8 of ETS 024 and article 78 paragraph 1 of the bilateral treaty),
- **Croatia:** (to be completed)
- **Hungary:** place of commission of the offence (article 87 of the bilateral treaty),
- **Romania:** political offence, military offence, offence through press, own national, place of commission of the offence, lapse of time, final judgment (article 69 of the bilateral treaty)
- **"The former Yugoslav Republic of Macedonia":** death sentence with guarantees, amnesty and conviction in absence with guarantees (articles 11-14 of the bilateral treaty).
- **Slovenia:** death sentence with guarantees, amnesty and conviction in absence with guarantees (articles 13, 14 and 15 of the bilateral treaty).

According to the above, possible or imposed punishment may be a reason to refuse extradition, according to article 425 paragraph 2 of the CPC.

If the extradition has been requested on the grounds of a criminal offence that carries a death sentence under the legislation of the country which has requested the extradition and the state which has requested the extradition has not granted a guarantee that no death sentence shall be pronounced or executed, extradition may be refused.

## (7) ISSUING AND EXECUTING AN EXTRADITION REQUEST

### i. Competencies of the national authorities involved in the procedure

#### *Outgoing requests*

See article 408 in conjunction with article 447 of the CPC of Bosnia and Herzegovina.

The Ministry of Justice of Bosnia and Herzegovina is the central authority for receiving requests for extradition, except in urgent cases when the communication takes place through the Office for Co-operation with INTERPOL.

#### *Incoming requests*

See article 409 in conjunction with article 447 of the Criminal Procedure Code of Bosnia and Herzegovina.

The Ministry of Justice of Bosnia and Herzegovina receives requests for extradition, except in urgent cases when the communication takes place through the Office for Co-operation with INTERPOL.

The Ministry of Justice of Bosnia and Herzegovina submits a request to the Prosecutor of Bosnia and Herzegovina or sends it to the relevant Entity Ministry of Justice, which forwards the request to the competent Prosecutor's Office. Admissibility and manner of execution of the action that is subject of the foreign authority's request is to be decided by the court or the prosecutor, as regulated in Bosnia and Herzegovina, and in accordance with his/her competencies.

## ii. Procedure

### *Rule of speciality*

Applies according to article 426 of the CPC and article 14 of ETS 024.

Bilateral treaties:

Slovenia: article 21, "the former Yugoslav Republic of Macedonia": article 19

### ***Simplified extradition procedure***

Not applicable.

### ***Surrender of the person***

The responsible authority for the execution of extradition is the Office for Co-operation with INTERPOL (within the Ministry of Security of Bosnia and Herzegovina), in co-operation with other police forces in Bosnia and Herzegovina.

### ***Postponed or conditional surrender***

Postponed surrender:

See article 19, paragraph 1 of ETS 024 and the bilateral treaty.

It is possible according to article 425 of the CPC, article 5 of the bilateral treaty with Albania, article 78 paragraph 1 of the bilateral treaty with Bulgaria, article 96 paragraph 1 of the bilateral treaty with Hungary, article 75 paragraph 1 of the bilateral treaty with Romania.

Postponed extradition according to article 425, paragraph 1 of the CPC of Bosnia and Herzegovina may happen because of the criminal proceedings pending against the person whose extradition is requested or because the foreign national is serving a sentence in Bosnia and Herzegovina.

Conditional surrender:

See article 19 (2) of ETS 024

It is possible according to article 426 paragraph 2 of the CPC, article 78 paragraph 2 of the bilateral treaty with Bulgaria, article 96 paragraph 2 of the bilateral treaty with Romania.

### ***Extradition procedures in Bosnia and Herzegovina***

- The Ministry of Justice of Bosnia and Herzegovina receives a request for extradition.
- The Ministry of Justice of Bosnia and Herzegovina delivers the request to the responsible Prosecutor's Office which establishes the location of the requested person.
- The Prosecutor establishes the identity of the person notifies him of the request for extradition and takes his statement for the defence purpose.
- Upon the Prosecutor's proposal the preliminary proceedings judge issues an order on detention, if there are reasons for detention (following a request of the requesting party or according to article 132 of the CPC of Bosnia and Herzegovina).
- Having heard the Prosecutor and defence attorney, the preliminary proceeding judge carries out other investigative actions to establish if the conditions have been met to extradite the foreign national or to surrender the objects on which or by way of which the criminal offence has been committed, if these objects have been seized from the foreign national.
- Upon the execution of investigative actions, the preliminary proceeding judge delivers the file on the investigation, together with his opinion, to the panel, which issues a decision establishing whether the legal requirements for extradition have been met.
- If the legal conditions for extradition have been met and after the decision has become final, the case is forwarded to the Ministry of Justice of Bosnia and Herzegovina, which decides on extradition after the examination of the case.
- If the decision on extradition is affirmative, the Minister of Justice of Bosnia and Herzegovina issues the decision on extradition.

## **(8) SPECIAL RULES ON NATIONALS**

### **i. Extradition of nationals**

It is not possible, according to article 415 paragraph 1(a) of the CPC. See also relevant provisions of existing bilateral treaties on mandatory grounds for refusal of extradition.

### **ii. Institution of criminal proceedings against non-extradited nationals**

**Hungary:** article 82 of the bilateral treaty

Criminal proceedings against non-extradited nationals are instituted according to article 422 paragraph 4 of the CPC, without an explicit request of the initially requesting party.

**(9) LANGUAGE OF THE REQUEST/TRANSLATION**

According to article 416 paragraph 4 of the CPC, translations into one of the official languages of Bosnia and Herzegovina have to be provided.

## 2.2.2 Requests for instituting proceedings & transfer of proceedings

### (10) REQUESTS FOR INSTITUTING CRIMINAL PROCEEDINGS

#### i. Legal basis

##### *Multilateral treaties and conventions*

European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073)

##### *Bilateral treaties*

With member States signatories to ETS 073.

- **Bulgaria:** it is not possible to send such a request, creating an obligation for the informed party to consider the offence, but there is an obligation for the other party to supply information according to the same abovementioned article. Under article 64 of the bilateral treaty, the parties shall inform each other about offences which were committed on the territory of each country by nationals of the other country, who have left their own country after committing the offence.
- **Hungary:** article 82 of the bilateral treaty creates an obligation to institute criminal proceedings against own nationals who committed a criminal offence on the territory of the other party. Information on the commission of the offence is necessary.
- **Romania:** article 66 of the bilateral treaty creates an obligation for the parties to inform each other about the criminal offences that were committed by nationals of the other party on the territory of the first party. It creates an obligation to start criminal proceedings against its own national, subject to the conditions set by national law.
- **“The former Yugoslav Republic of Macedonia”:** Agreement on legal assistance in civil and criminal matters (Official Gazette of Bosnia and Herzegovina, 16/2006) according to article 37.
- **Croatia:** Agreement on legal assistance in civil and criminal matters (Official Gazette of Bosnia and Herzegovina – International Treaties 1/96); Agreement on amendments to the Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia on legal assistance in civil and criminal matters (Official Gazette of Bosnia and Herzegovina – Annex, International Treaties 11/2005) according to article 34.
- **Serbia and Montenegro:** Agreement on mutual legal assistance in civil and criminal matters (Official Gazette of Bosnia and Herzegovina, 11/2005) according to article 39.

##### *National legislation*

Criminal Procedure Code of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09), Chapter XXXI

- Taking charge of the criminal prosecution by a foreign state, article 413
- Decision rejecting extradition, article 422 (4)

Criminal Procedure Code of The Federation of Bosnia and Herzegovina (Official Gazette of The Federation of Bosnia and Herzegovina, 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09), Chapter XXXI

- Taking charge of the criminal prosecution by a foreign state, article 433

Criminal Procedure Code of Republika Srpska (Official Gazette of Republika Srpska, 111/04, 115/04, 29/07, 68/07, 119/08), Chapter XXXI

- Taking charge of the criminal prosecution by a foreign state, article 424.

#### ii. Conditions

The request by a foreign state for criminal prosecution of a Bosnia and Herzegovina national or a person having permanent residence in Bosnia and Herzegovina for a criminal offence committed abroad.

For Bosnia and Herzegovina, see article 413 of the CPC of Bosnia and Herzegovina.

For The Federation of Bosnia and Herzegovina, see article 433 of the CPC The Federation of Bosnia and Herzegovina.

For Republika Srpska, see article 424 of the CPC Republika Srpska.

**iii. Procedure**

***Instituting criminal proceedings***

- The request of a foreign state for Bosnia and Herzegovina to institute the criminal prosecution of a national of Bosnia and Herzegovina or a person having permanent residence in Bosnia and Herzegovina (The Federation of Bosnia and Herzegovina or Republika Srpska) with respect to a criminal offence committed outside the territory of Bosnia and Herzegovina, is delivered, together with the files, to the Ministry of Justice of Bosnia and Herzegovina.
- The Ministry of Justice of Bosnia and Herzegovina forwards the request with the files to the Prosecutor of Bosnia and Herzegovina or the Entity Ministry of Justice.
- The Entity Ministry of Justice delivers the request with the files to the competent prosecutor.
- The prosecutor who has received the request by a foreign state, together with the files, decides whether to grant or reject the request.
- The foreign state is notified of the decision rejecting the request to take charge of the criminal prosecution, and of the final decision taken in the criminal proceedings.

***Relinquishing criminal prosecution abroad***

For the Federation of Bosnia and Herzegovina: according to article 433 of the CPC of the Federation of Bosnia and Herzegovina, the prosecutor has to decide upon relinquishment before the indictment has been issued. If the indictment has already been issued, the preliminary hearing judge decides upon relinquishment of the prosecution upon proposal of prosecutor.

For Republika Srpska: according to article 423 of the CPC of Republika Srpska, the prosecutor has to decide upon relinquishment before the indictment has been issued. If the indictment has already been issued, the preliminary hearing judge decides upon relinquishment of the prosecution upon proposal of prosecutor.

**(11) TRANSFER OF PROCEEDINGS**

**i. Legal basis**

***Multilateral treaties and conventions***

See above.

***Bilateral treaties***

See above.

***National legislation***

If a criminal offence has been committed in the territory of Bosnia and Herzegovina by a foreign national who has the permanent residence in a foreign state, all criminal files may be ceded to this state for the purpose of criminal prosecution and trial, unless the foreign state is opposed thereto.

See article 412, the CPC of Bosnia and Herzegovina.

See article 433, the CPC of the Federation of Bosnia and Herzegovina.

See article 423, the CPC of Republika Srpska.

**ii. Conditions**

See article 412, the CPC of Bosnia and Herzegovina.

See article 433, the CPC of the Federation of Bosnia and Herzegovina.

See article 423, the CPC of Republika Srpska.

- If a criminal offence has been committed in the territory of Bosnia and Herzegovina (the Federation of Bosnia and Herzegovina and Republika Srpska) by a foreign national who has the permanent residence in a foreign state, all criminal files may be ceded to this state for the purpose of criminal prosecution and trial, unless the foreign state is opposed thereto.
- Relinquishment of criminal prosecution and trial shall not be allowed if in that case the foreign national might be subjected to unfair trial, inhuman and humiliating treatment or punishment.
- If the injured party in the case is a citizen of Bosnia and Herzegovina, such relinquishment shall not be allowed if the said citizen is opposed thereto, unless compensation insurance has been deposited for the injured party's claim under property law.

**iii. Procedure**

- Before an indictment has been brought, the decision on relinquishment shall be taken by the Prosecutor.
- After the indictment has been brought and before the case is taken by the judge, or the panel for the purpose of scheduling the main trial, the decision shall be taken by the preliminary proceedings judge, upon the Prosecutor's motion.

## 2.2.3 Procedures for mutual legal assistance

### (12) LETTERS ROGATORY

#### i. Legal basis

##### ***Multilateral treaties and conventions***

- European Convention on Mutual Assistance in Criminal Matters, ETS 030
- Protocol to the European Convention on Mutual Assistance in Criminal Matters, ETS 099
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, ETS 182

##### ***Bilateral treaties***

- **Albania:** Agreement on extradition (1928)
- **Bulgaria :** Treaty between the Republic of Bulgaria and the Socialist Federal Republic of Yugoslavia on mutual legal assistance (26.01.1957)
- **Croatia:** Treaty on legal assistance on civil and criminal matters (26.02.1996), Treaty on amendments to the Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia on legal assistance in civil and criminal matters (Official Gazette of Bosnia and Herzegovina – Annex, International treaties 11/2005)
- **Hungary:** Treaty on mutual legal assistance between Hungary and the Socialist Federal Republic of Yugoslavia (Law Decree No. 1 of 1969, modified by Decree No. 1 of 1988)
- **Romania :** Treaty between Romania and the Socialist Federal Republic of Yugoslavia on legal assistance (Belgrade, 18.10.1960) and its additional protocol (21.01.1972)
- **“The former Yugoslav Republic of Macedonia”:** Treaty on legal assistance in civil and criminal matters (Official Gazette of Bosnia and Herzegovina, 16/2006).
- **Serbia:** Treaty on mutual assistance in civil and criminal matters (Official Gazette of Bosnia and Herzegovina 11/2005),
- **Montenegro:** Treaty on mutual assistance in civil and criminal matters (Official Gazette of Bosnia and Herzegovina, 11/2005)

##### ***National legislation***

According to article 407 of the CPC of Bosnia and Herzegovina, mutual assistance in criminal matters is provided in accordance with the provisions of the CPC of Bosnia and Herzegovina, unless a law of Bosnia and Herzegovina or an international agreement provides otherwise.

#### ii. Channels of communication (sending, receiving and returning of requests)

##### ***Through direct contacts***

At the level of State Prosecutor's Offices in accordance with signed protocols on agreement in providing mutual co-operation: Croatia, Serbia and Montenegro.

##### ***Through central authorities***

Ministry of Justice of Bosnia and Herzegovina: See the statement of Bosnia and Herzegovina on the central authority delivered along with the instrument of ratification of the Convention and the Protocols.

Office for Co-operation with INTERPOL within the Ministry of Security of Bosnia and Herzegovina: Communication in case of urgency.

##### ***Through diplomatic channel***

Communication through diplomatic channels is not excluded, but for the purpose of effective execution of letters rogatory, communication through the central authority is recommended.

#### iii. Form and content of requests for mutual legal assistance

##### ***List of measures which may be provided***

All measures specified in ETS 030, ETS 099 and ETS 182 can be offered to the member States.

The provisions of the Second Additional Protocol have yet not been included in national legislation, but they are implemented in practice with no special difficulties, mostly on the basis of other generally formulated



provisions in legislation of Bosnia and Herzegovina. Adoption of the proposed Law on Mutual Assistance in Criminal Matters is pending and this proposed law mostly covers all provisions of the Second Protocol, which will make it easier for all competent bodies to implement those provisions in practice.

Measures possible include:	Legal basis/information to be included
Hearings (including interrogation and confrontation, identification of persons and objects)  Hearing of witnesses	Yes. - Article 91-94 of the Criminal Procedure Code of Federation of Bosnia and Herzegovina Yes. - Articles 145-155 of the Criminal Procedure Code of Republika Srpska. - Article 95 of the Criminal Procedure Code of Federation of Bosnia and Herzegovina.
Transfer of persons deprived of liberty for the purpose of hearing	Possible according to bilateral treaties with Albania (art.15), Bulgaria (art. 59), Hungary (art. 77), Romania (art. 62)
Search and seizure of evidence	Yes - Articles 115 -138 of the Criminal Procedure Code of Republika Srpska. - Articles 66-88 of the Criminal Procedure Code of Federation of Bosnia and Herzegovina.
Search, identification, freezing, seizure and confiscation of instrumentalities and proceeds of crime	
Use of special investigative means	Yes. Article 130 of the Criminal Procedure Code of Federation of Bosnia and Herzegovina for criminal offences punishable by at least 3 years imprisonment or by a more severe sentence. For Republika Srpska: see articles 226-227 of the Criminal Procedure Code of Republika Srpska.

#### iv. Legal basis/information to be included

##### *Information to be included in a request*

- **Albania:** articles 14-15 of the bilateral treaty
- **Bulgaria :** articles 54, 55 and article 9 in connection with article 61 of the bilateral treaty
- **Croatia:** article 6 of the bilateral treaty
- **Hungary:** article 79a of the bilateral treaty
- **Romania :** articles 8 and 9 in connection with article 61 of the bilateral treaty
- **Serbia:** article 6 of bilateral treaty
- **Montenegro:** article 6 of bilateral treaty
- **“The former Yugoslav Republic of Macedonia”:** article 6 of bilateral treaty

According to article 14 of ETS 030:

- Legal basis of a request
- Scope and reason for letter rogatory
- Requesting authority
- Identity and nationality of the person against whom proceedings are to be instituted
- Legal description of the criminal offence and citation of the excerpt of the CPC
- Summary of facts
- Other information related to specific letters rogatory

##### *Specific requirements: dual criminality/Reciprocity*

No specific requirements.

##### *Language of the request/translation*

According to article 416 (4) of the CPC of Bosnia and Herzegovina, a translation into one of the official languages in Bosnia and Herzegovina must be provided.

Signed bilateral treaties provide for the delivery of a letter rogatory in one of the official languages in Bosnia and Herzegovina (i.e. in the language of the requesting state), such as:

"The former Yugoslav Republic of Macedonia": article 5 (1)  
Slovenia: article 6 (1)  
Bulgaria: article 73 (4)  
Hungary: article 91 (5)

**v. Grounds for refusal of an assistance request**

In the case it is impossible to execute the request.

**Bulgaria:** According to article 56 of the bilateral treaty, assistance will be refused (mandatory grounds) if:

- a) is there is no dual criminality
  - b) if the offence is considered by the requested country as a political offence or as a merely military offence.
- According to article 57, assistance may be refused (optional grounds) is:
- a) the requested party considers that the execution of the request is likely to prejudice its sovereignty rights or its security
  - b) if this is in contradiction with the basic principles of its legislation
  - c) if the accused person is a national of the requested country

**Hungary:** according to article 74 of the bilateral treaty on optional grounds for refusal.

**Romania:** according to article 60 of the bilateral treaty on optional grounds for refusal.

**vi. Issuing and executing a request**

***Competencies of the national authorities***

- Request of a foreign state for legal assistance is submitted to the Ministry of Justice of Bosnia and Herzegovina.
- The Ministry of Justice of Bosnia and Herzegovina forwards the request to the Prosecutor of Bosnia and Herzegovina or the Entity Ministry of Justice.
- The Entity Ministry of Justice delivers the request to the competent prosecutor.
- The Prosecutor who has received the request of a foreign state decides whether to grant or reject the request.
- The foreign state is notified of the decision rejecting the request, with an indication of the reasons for rejection, as well as of the execution of the request.

***Procedure***

See above.

**vii. Costs of assistance**

See article 5 of ETS 182.

**(13) REQUESTS FOR SERVING OF SUMMONSES, JUDGMENTS AND OTHER PROCEDURAL DOCUMENTS**

See article 7 of ETS 030.

**(14) EXCHANGE OF CRIMINAL RECORDS**

According to article 411 of the CPC of Bosnia and Herzegovina, the Ministry of Justice of Bosnia and Herzegovina issues information, upon the request, from the criminal records, as supplied by the competent court. Article 13 of ETS 030 applies.

## 2.2.4 Transfer of sentenced persons & validity of foreign judgments

### (15) TRANSFER OF SENTENCED PERSONS

#### i. Legal basis

Convention on the Transfer of Sentenced Persons (ETS 112)

Bilateral treaties:

**Montenegro:** Agreement on mutual enforcement of judicial decisions in criminal matters (2005)

**Croatia:** Agreement on mutual enforcement of judicial decisions in criminal matters (1996; Amendments to the Agreement in 2005)

**“The former Yugoslav Republic of Macedonia”:** Agreement on mutual enforcement of judicial decisions in criminal matters (2006)

**Slovenia:** Agreement on mutual enforcement of judicial decisions in criminal matters (2005)

**Serbia:** Agreement on mutual enforcement of judicial decisions in criminal matters (2005)

#### ii. Conditions

See article 3 of ETS 112

**Montenegro:** article 2 of bilateral treaty

**Croatia:** article 2 of bilateral treaty

**“The former Yugoslav Republic of Macedonia”:** article 2 of bilateral treaty

**Slovenia:** article 2 of bilateral treaty

**Serbia:** article 2 of bilateral treaty

#### iii. Procedures

See articles from 5 to 15 of ETS 112.

**Montenegro:** articles 20 – 27 of bilateral treaty

**Croatia:** articles 20 – 28 of bilateral treaty

**“The former Yugoslav Republic of Macedonia”:** articles 19 – 26 of bilateral treaty

**Slovenia:** articles 19 – 25 of bilateral treaty

**Serbia:** articles 20 – 27 of bilateral treaty

### (16) VALIDITY OF FOREIGN JUDGMENTS

See article 410 of the Criminal Procedure Code of Bosnia and Herzegovina

See article 431 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina

See article 421 of the Criminal Procedure Code of Republika Srpska

## 2.2.5 Contact details of competent authorities and list of contact points

Ministry of Justice of Bosnia and Herzegovina	<p><b>Mr. Nikola SLADOJE</b> Head of Department Sector for International and inter-Entity Legal Assistance and Co-operation Senoina1 71000 Sarajevo Tel/Fax + 387 33 664 759 Tel + 387 33 650 749</p> <p><b>Mrs Sandra MALESIC</b> Expert Adviser on International Legal Co-operation E-mail: s.malesic@mpr.gov.ba</p>	Languages spoken: English
Ministry of Justice of Bosnia and Herzegovina	<p>Trg BiH 1, Marijindvor 71000 Sarajevo Tel + 387 33 223 501 Fax + 387 33 223 504 www.mpr.gov.ba</p>	

## 2.3 CROATIA

### 2.3.1 Extradition procedures

#### (1) LEGAL BASIS

##### i. Multilateral treaties and conventions

- European Convention on Extradition (ETS 024),
- Additional Protocol to the European Convention on Extradition (ETS 086)
- Second Additional Protocol to the European Convention on Extradition (ETS 098)
- United Nations Convention Against Corruption

##### ii. Bilateral treaties

With the member States signatories to ETS 024:

With:

- **Albania** : Convention on Extradition (22.06.1926)
- **Bulgaria**: Treaty on mutual legal assistance (23.03.1956)
- **Hungary**: Treaty on mutual legal assistance (07.03.1968) and Treaty on amendments to the Treaty on mutual legal exchange (25.04.1986)
- **Romania**: Treaty on legal assistance (18.10.1960) and Additional Protocol to the Treaty (21.01.1972)
- **Slovenia**: Treaty on legal assistance in civil and criminal matters (07.02.1994), Treaty on extradition (08.07.1994) – OG International Treaties, 6/98 i 5/99, Agreement on readmission of persons whose entry or residence is illegal (01.07.2006)
- **Serbia and Montenegro**: Treaty on legal assistance on civil and criminal matters (15.09.1997) concluded with the former Federal Republic of Yugoslavia, Treaty on readmission of persons whose entry or residence in the state territory of the other country is illegal (17.06.2004), Protocol on co-operation between the Ministry of Justice of Republic of Croatia and the Ministry of Justice of the Republic of Serbia (05.12.2005), Treaty on legal assistance in civil and criminal matters (28.05.1998)
- **“the former Yugoslav Republic of Macedonia”**: Treaty on legal assistance on civil and criminal matters (02.09.1994), Treaty on mutual enforcement of judicial decisions in criminal matters (02.09.1994)

##### iii. National legislation

- See Articles 9 and 140 of the Constitution of the Republic of Croatia
- Chapter 31 (Articles 511 to 527) of the Criminal Procedure Code
- Law on mutual legal assistance in criminal matters – Art. 32 to 69

Article 511 provides that extradition proceedings of accused or sentenced foreign persons shall be handled according to the processes defined by this law unless otherwise contracted by international agreement. The Republic of Bosnia and Herzegovina is not a party to ETS 024 and as there is no bilateral agreement concluded, the criminal procedure laws of both States remain the only legal basis for extradition.

#### (2) DETENTION OF THE REQUESTED PERSON

##### i. Provisional arrest for extradition (conditions and channel of communication)

###### *Upon request*

- Law on mutual legal assistance in criminal matters – Decision on detention for purpose of extradition – Art. 47 to 49 (for all states)

###### *Without request*

For countries parties to ETS 024, it is possible for:

**Albania**: according to Article 9 of the bilateral treaty

**Bulgaria**: according to Article 75 paragraph 5 of the bilateral treaty.

##### ii. Arrest for extradition (conditions and channel of communication)

Law on mutual legal assistance in criminal matters – Request for temporary apprehension for purposes of extradition – Art. 44 to 47

### **(3) CHANNELS OF COMMUNICATION FOR EXTRADITION REQUESTS**

Law on mutual legal assistance in criminal matters – Request for extradition Art. 43.

### **(4) FORM AND CONTENT OF REQUESTS FOR EXTRADITION**

For countries parties to ETS 024: according to Article 12.

Law on mutual legal assistance in criminal matters – Request for extradition – Art. 43 and Art. 8.

### **(5) GROUNDS FOR REFUSAL OF AN EXTRADITION REQUEST**

#### **i. Mandatory grounds**

Law on mutual legal assistance in criminal matters – Refusal of extradition – Art. 35 and Art. 36.

#### **Article 35**

(1) Extradition shall not be allowed:

1. if a person whose extradition has been requested is a citizen of the Republic of Croatia;
2. if the offence on the basis of which the extradition has been requested was committed in the territory of the Republic of Croatia, against the Republic of Croatia or against its citizen;
3. if the offence on the basis of which the extradition has been requested does not constitute criminal offence under the domestic legislation as well as under the legislation of the state in which it was committed;
4. if the statute of limitation applies with respect to criminal prosecution or execution of the sentence under the domestic legislation before the alien is taken into custody or examined as a suspect or accused;
5. if the alien whose extradition has been requested has been convicted for the same criminal offence by a domestic Court, or that he has been acquitted by a final and binding decision of the domestic Court, with regard to the same offence, unless conditions have been obtained for a renewal of the criminal proceedings as provided for by the Criminal Procedure Code, or if criminal proceedings were instituted in the Republic of Croatia against the alien for the same criminal offence against the Republic of Croatia, and if criminal proceedings were instituted for an offence committed against a citizen of the Republic of Croatia – if no compensation insurance was deposited for the claim under property law of the injured party;
6. if the identity of the person whose extradition has been requested is not verified;
7. if there is no sufficient evidence for a grounded suspicion that the alien whose extradition has been requested committed a criminal offence or that there is no final verdict.

(2) Extradition of an alien may be refused if the Republic of Croatia may take over the criminal prosecution or the execution of the foreign criminal sentence, and this seems to be appropriate considering the social rehabilitation of the suspect or accused.

#### **Article 36**

A foreign national who is subject to jurisdiction of the Republic of Croatia may exceptionally be extradited to another state if it is justified by special circumstances, and especially by the possibility of social rehabilitation.

#### *Resolution refusing the request for extradition*

#### **Article 55**

(1) If the competent court finds that statutory preconditions for extradition have not been met, it shall issue a resolution refusing the request for extradition and deliver it without delay to the Supreme Court of the Republic of Croatia, which will either confirm, repeal or reverse the resolution after hearing the competent state attorney.

(2) A final resolution refusing the extradition shall be delivered to the Ministry of Justice, which will notify the requesting state thereof.

**ii. Optional grounds**

- Judgment in absentia: Article 3 of ETS 098

**(6) ISSUING AND EXECUTING AN EXTRADITION REQUEST**

**GROUND FOR APPROVAL OF AN EXTRADITION REQUEST**

See ETS 024

Law on mutual legal assistance in criminal matters – Extradition of a Croatian citizen – preconditions – Article 32

Extradition of a foreign national – preconditions – Art. 33 and Art. 34

*Resolution allowing extradition*

Article 56

(1) When the judges' panel of the competent court finds that the statutory preconditions for extradition have been met, it shall issue a resolution to that effect.

(2) An appeal may be lodged against this resolution within 3 days. The Supreme Court of the Republic of Croatia shall decide on the appeal.

*Resolution of the Minister of Justice*

Article 57

(1) A final resolution determining that the statutory preconditions for extradition have been met, shall be delivered together with the judicial record to the Ministry of Justice.

(2) The Minister of Justice shall issue a resolution whereby extradition is either allowed or not.

(3) In the resolution allowing the extradition, the Minister of Justice shall state the following:

1. that the extradited person may not be criminally prosecuted for another criminal offence committed anterior to extradition, unless he waived this right pursuant to Article 40 paragraph 2 of this Act,

2. that a punishment may not be imposed upon an extradited person for another criminal offence anterior to extradition, unless he waived this right pursuant to Article 40 paragraph 2 of this Act,

3. that the extradited person may not be extradited to a third state for criminal prosecution or enforcement of the prison sentence for an offence committed anterior to extradition, without the permission of the Minister of Justice of the Republic of Croatia.

(4) In addition to the aforementioned conditions, the Minister of Justice may impose other extradition preconditions to the requesting state in a resolution referred to in paragraph 2 of this Article.

(5) The resolution of the Minister of Justice referred to in paragraph 2 of this Article may not be appealed.

**i. Competencies of the national authorities involved in the procedure**

***Outgoing requests***

Law on mutual legal assistance in criminal matters

Article 45

The Ministry of Justice transmits the request for extradition, i.e. the request for temporary arrest for the purpose of extradition, to the competent court on whose territory the person whose extradition has been requested either resides or is found.

***Incoming requests***

Articles 513 to 520 of the Criminal Procedure Code apply.

**ii. Procedure**

***Rule of speciality***

Article 37

(1) Extradition shall be allowed provided that the requesting state, in respect of the extradited person:

1. does not prosecute, punish or extradite that person to a third state for any offence committed prior to extradition, in respect of an offence for which extradition has not been granted,

2. does not restrict his personal rights due to the reasons which have not occurred in relation to extradition,

3. does not bring him before a special court.

(2) Conditions referred to in paragraph 1 points 1 and 2 of this Article shall not apply:

1. if the extradited person expressly waives such conditions, or

2. if the extradited person, despite being warned of the consequences, fails to leave the state territory of the requesting state within 45 days after the probationary or final release from detention, although he could have done so, or if he comes back to that territory after leaving the territory.

### ***Simplified extradition procedure***

Law on mutual legal assistance in criminal matters – Art. 54

(1) Extradited person may give consent to be surrendered to the requesting state pursuant to the simplified extradition procedure, as well as waive the right referred to in Article 40 paragraph 2 of this Act, after which the competent court shall approve his extradition, unless there are reasons to the contrary.

(2) Consent and waiver referred to in paragraph 1 of this Article shall be entered into the minutes before a competent court pursuant to the Criminal Procedure Act, in a way which proves that the extradited person acted voluntarily in this and was fully aware of the consequences.

(3) Consent and waiver referred to in paragraph 1 of this Article are irrevocable.

(4) The competent court shall notify the Ministry of Justice on the consent referred to in paragraph 1 of this Article without delay. The Ministry of Justice will, at latest within 10 days as of the extradited person's detention, notify the requesting state, which is not obliged to deliver the request for extradition in that case.

(5) If the extradited person gave his consent referred to in paragraph 1 of this Article, the court shall, after the expiry of the deadline referred to in paragraph 4 of this Article, carry out a simplified extradition procedure if the request for extradition has not been received yet.

(6) If the extradited person gave his consent referred to in paragraph 1 after the expiry of the deadline referred to in paragraph 4 of this Article, and the request for extradition was received in the meantime, the competent court may carry out a simplified extradition procedure.

(7) Simplified extradition procedure has equal effects of extradition and is subject to the same conditions. The requesting state shall be warned about this.

### ***Surrender of the person***

Law on mutual legal assistance in criminal matters

#### ***Enforcement of the extradition***

Article 59

(1) The Ministry of Interior is in charge of enforcement of the resolution on extradition, which will agree with the competent authority of the requesting state on the place and time of surrendering the extradited person.

(2) Surrender of the extradited person must be executed at latest within 2 months as of the enforceability of the resolution on extradition.

(3) If the requesting state does not take over the extradited person within eight days as of the agreed day of surrender referred to in paragraph 1 of this Article, the extradited person shall be released from detention. This deadline may be prolonged for the maximum of 30 days based on a justified request of the requesting state.

### ***Postponed or conditional surrender***

See Article 19 paragraph 1 (postponed surrender) and paragraph 2 (conditional surrender) of ETS 024.

See bilateral treaties with:

- **Slovenia:** Article 15 paragraph 1 for postponed surrender and paragraph 2 for conditional surrender.
- **Bulgaria:** Article 78 paragraph 1 for postponed surrender and paragraph 2 for conditional surrender.
- **Hungary:** Article 96 paragraph 1 for postponed surrender and paragraph 2 for conditional surrender.

#### ***Postponed surrender and temporary extradition***

Article 60

(1) Enforcement of the extradition may be postponed until the completion of the criminal proceedings carried out for another criminal offence in the Republic of Croatia against the extradited person, or until the extradited person completes serving the prison sentence in the Republic of Croatia or a security measure of deprivation of liberty.

(2) Temporary extradition may be allowed if it will not harmfully influence the criminal proceedings pending before a domestic court and if the requesting state guaranteed to keep the extradited person in detention during his stay in that state and to return the extradited person to the Republic of Croatia within the term determined by the Ministry of Justice.

### ***Extradition procedures in the Republic of Croatia***

- Request arrives at the Ministry of Justice
- Ministry of Justice forwards the demand for extradition to the competent court's (in the territory of which the person whose extradition has been requested resides or is found) investigating judge
- The investigative judge establishes the identity of the person and takes the person's defence statement
- The investigative judge can order the arrest



- After hearing, the state prosecutor and defence attorney, the investigating judge can conduct further investigations and after then, he will hand over his findings with his opinion to the council of judges of the same court.
- The competent court issues a decision on detention for purposes of extradition, except that there is a possibility that the extradition will not be granted and having the foreign national at large will not endanger the extradition procedure.
- The council of judges decides if all legal conditions for extradition are met
- In the case there is a positive judgment, the Minister of Justice takes the decision for or against the extradition.

## **(7) SPECIAL RULES ON NATIONALS**

### **i. Extradition of nationals**

Article 32

(1) A Croatian national may not be extradited for criminal prosecution or enforcement of a prison sentence in a foreign state, nor may he be transferred as a convicted person from the Republic of Croatia to another state for the purpose of serving the prison sentence.

(2) The provision of paragraph 1 of this Article shall not apply in cases of temporary transfer of a Croatian national to the domestic judicial authority for the purpose of undertaking certain actions within the criminal proceedings in the Republic of Croatia.

### **ii. Institution of criminal proceedings against non-extradited nationals**

The request for institution of criminal proceedings together with the complete file is submitted to the competent State Prosecutor's Office, who decides upon the institution of proceedings (according to Article 6 of ETS 024).

## **(8) LANGUAGE OF THE REQUEST/TRANSLATION**

Law on mutual legal assistance in criminal matters – Article 8, Paragraph 1

## 2.3.2 Requests for instituting proceedings & transfer of proceedings

### (9) REQUESTS FOR INSTITUTING CRIMINAL PROCEEDINGS

#### i. Legal basis

##### ***Bilateral treaties***

With member States signatories to ETS 073.

**“The former Yugoslav Republic of Macedonia”:** Treaty on legal assistance in civil and criminal matters according to Article 37.

**Bosnia and Herzegovina:** Agreement on legal assistance in civil and criminal matters; Agreement on amendments to the Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia on legal assistance in civil and criminal matters

**Serbia and Montenegro:** Treaty on mutual legal assistance in civil and criminal matters, according to Art. 39

**Hungary:** Treaty on mutual legal exchange (07.03.1968), according to Art. 82

**Romania:** Treaty on legal assistance (8.10.1960) and the Additional Protocol to the Treaty (21.01.1972) according to Article 66

**Bulgaria:** Treaty on mutual legal assistance (23.03.1956), according to Article 64

**Slovenia:** Treaty on legal assistance in civil and criminal matters (07.02.1994)

##### ***National legislation***

Law on mutual legal assistance in criminal matters – Chapter IV. Taking over and surrendering proceedings – Art. 62 to Art. 69.

#### ii. Conditions

Article 62

Upon request of a foreign judicial authority, the domestic judicial authority may take over carrying out criminal proceedings for a criminal offence committed abroad:

1. when extradition is not allowed,
2. if a foreign judicial authority stated that it shall not further criminally prosecute the prosecuted person after the final decision of the domestic judicial authority.

#### iii. Procedure

- A request of the foreign judicial authority for instituting criminal prosecution against a Croatian citizen or the person with the permanent residence in the Republic of Croatia for a criminal offence committed abroad shall be sent, along with the criminal files, to the competent state attorney in the territory of whom the person concerned has the permanent residence.
- If, in the criminal proceedings taken over, a claim under property law has been filed with the foreign judicial authority, the domestic judicial authority shall act as if such a claim had been filed in proceedings before the domestic court.
- A refusal to take over the criminal proceedings or a final decision brought in the criminal proceedings taken over, shall be communicated to the foreign judicial authority that submitted the request, through the Ministry of Justice.

## **(10) TRANSFER OF PROCEEDINGS**

### **i. Legal basis**

#### ***Multilateral treaties and conventions***

See ETS 030: Article 21.

#### ***Bilateral treaties***

See above.

#### ***National legislation***

Law on mutual legal assistance in criminal matters – Chapter IV. Taking over and surrender of the proceedings – Art. 62 to Art. 69

### **ii. Conditions**

(1) If a foreigner domiciled in a foreign county committed an offence in the territory of the Republic of Croatia, criminal prosecution may be surrendered to that country, provided it does not object thereto.

(2) Criminal prosecution may be surrendered for offences with prescribed punishment up to ten years of imprisonment.

### **iii. Procedure**

- Request to surrender criminal prosecution shall be supported by the criminal files and all collected evidence.
- Prior to rendering a decision to conduct an investigation, the competent state attorney issues the decision on surrendering the proceedings.
- During the investigation, the decision is rendered by an investigative judge upon a proposal of the competent State Attorney. This decision is rendered by the judicial panel until the commencement of the trial.
- In the case of surrender of criminal prosecution, the domestic judicial authority shall inform the foreign judicial authority of the costs incurred in the proceedings.

## 2.3.3 Procedures for mutual legal assistance

### (11) LETTERS ROGATORY

#### i. Legal basis

##### ***Multilateral treaties and conventions***

- European Convention on Mutual Assistance in Criminal Matters (ETS 030)
- Additional protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 099)
- Second Additional Protocol to the European Convention on Extradition (ETS 098)

##### ***Bilateral treaties***

With member States signatories to ETS 030, ETS 099 and ETS 182.

Bilateral treaties have been concluded with:

- **Bosnia and Herzegovina:** Treaty on mutual legal assistance in civil and criminal matters (26.02.1996), Agreement on amendments to the Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia on legal assistance in civil and criminal matters (OG International Treaties, 05/03)
- **Bulgaria:** Treaty on mutual legal assistance (23.03.1956 or 27.01.1957)
- **Hungary:** Treaty on mutual legal assistance (07.03.1968, amended 25.04.1986)
- **Romania:** Treaty on legal assistance (18.10.1960, additional protocol of 21.01.1972)
- **Slovenia:** Treaty on legal assistance in civil and criminal matters (07.02.1994)
- **Serbia:** Treaty on legal assistance in civil and criminal matters (OG 06/98), in force since 28.05.1998.
- **“the former Yugoslav Republic of Macedonia”:** Treaty on legal assistance in civil and criminal matters (02.09.1994)

##### ***National legislation***

International criminal law assistance is provided under the provisions of the Law on mutual legal assistance in criminal matters, Official Gazette 178/04, in force since 01.05.2005.

#### ii. Channels of communication (sending, receiving and returning of requests)

##### ***Through direct contacts***

See the provisions of the **Law on mutual legal assistance in criminal matters**, OG, 178/04, Chapter II - International legal assistance in pending criminal proceedings in the Republic of Croatia or a foreign state, Art. 6, paragraphs 4, 5, 7.

##### ***Through central authorities***

See the provisions of the **Law on mutual legal assistance in criminal matters**, OG, 178/04, Chapter II - International legal assistance in pending criminal proceedings in the Republic of Croatia or a foreign state, Article 6, Paragraph 1, 2, 3, 6.

##### ***Through diplomatic channels***

See the provisions of the Law on mutual legal assistance in criminal matters, OG, 178/04, Chapter II - International legal assistance in pending criminal proceedings in the Republic of Croatia or a foreign state, Article 6, Paragraph 8

### iii. Form and content of requests for mutual legal assistance

#### *List of measures which may be provided*

Measures possible include:	Legal basis/information to be included
Hearings (including interrogation and confrontation, identification of persons and objects)	Art. 25-27 of the Law on mutual legal assistance in criminal matters
Transfer of persons deprived of liberty for the purpose of hearing	Articles 11, 15/5 of ETS 030
Search and seizure of evidence	Article 3, 5 and 6 of ETS 030 and Articles 211 to 217 of the Criminal Procedure Code
Search, identification, freezing, seizure and confiscation of instrumentalities and proceeds of crime	ETS 141 and Articles 218 to 221 of the Criminal Procedure Code
Use of special investigative means	<ul style="list-style-type: none"> <li>- Article 3 of ETS 030</li> <li>- Article 41 of the Law on the Office for the Prevention of Corruption and Organised Crime (USKOK)</li> </ul>
- Interception of telecommunications	See Article 180 of the Criminal Procedure Code
- Bugging	
- Observation	
- Order to produce specific documents	
- Undercover operation	
- Controlled delivery	
- Feigned giving/accepting	
- Temporary seizure of objects, documents or pecuniary gain	<ul style="list-style-type: none"> <li>- Art. 29 and Art. 30 of the Law on mutual legal assistance in criminal matters</li> <li>- provisions of the Criminal Procedure Code, Legal Assistance Art. 191-201, Special collection of evidence, Art. 332-340.</li> </ul>

#### *Information to be included in a request*

In accordance with Article 8, Paragraph 3 of the Law on mutual legal assistance in criminal matters:

1. place of issuance and the name of the competent authority making the request,
2. legal grounds to afford mutual legal assistance,
3. detailed description of an act of mutual legal assistance sought and the reason for the request,
4. legal title, short factual and legal description of the criminal offence (unless the request refers to service of judicial verdicts, depositions of parties, documents and alike),
5. exact data and nationality of the person concerned and his status in the proceedings,
6. in case of service of judicial writs, also the type of the writ to be served.

#### *Specific requirements: dual criminality/Reciprocity*

reciprocity, see Art.17 of the Law on mutual legal assistance in criminal matters

#### *Language of the request/translation*

In accordance with Article 8, Paragraph 1 of the Law on mutual legal assistance in criminal matters, the request and attached documents have to be accompanied by the translation into Croatian and, if this is not possible, into English.

### iv. Grounds for refusal of an assistance request

See Art. 12 and Art. 13 of the Law on mutual assistance in criminal matters

### v. Issuing and executing a request

#### *Competencies of the national authorities*

See Art. 6 and Art. 7 of the Law on mutual legal assistance in criminal matters

#### *Procedure*

See Art.8-11 the Law on mutual legal assistance in criminal matters

**vi. Costs of assistance**

See Art. 19 the Law on mutual legal assistance in criminal matters

**(12) REQUESTS FOR SERVING OF SUMMONSES, JUDGMENTS AND OTHER PROCEDURAL DOCUMENTS**

For parties to ETS 030: Article 7 applies.

For non parties: according to the provisions of the bilateral treaty.

The Law on mutual legal assistance in criminal matters – Particularities in the manner of executing the request, Art. 10, Paragraph 1

**(13) EXCHANGE OF CRIMINAL RECORDS**

see Article 7 of the European Convention on Mutual Judicial Assistance in Criminal Matters

## **2.3.4 Transfer of sentenced persons & validity of foreign judgments**

### **(14) TRANSFER OF SENTENCED PERSONS**

#### **i. Legal basis**

See the Convention on the Transfer of Sentenced Persons (ETS 112).

Bilateral treaties on the transfer of sentenced persons have been concluded with Bosnia and Herzegovina (26.02.1996, Amendments to the Treaty 2005), "the former Yugoslav Republic of Macedonia" (02.09.1994) and Slovenia (07.02.1994).

Article 507 of the Criminal Procedure Code also applies.

#### **ii. Conditions**

See Article 3 of ETS 112.

*Transit of the extradited person through the Republic of Croatia*  
*Article 42*

*(1) If a foreign state requests extradition from another foreign state, and the transit of the extradited person should be through the territory of the Republic of Croatia, the Minister of Justice may allow transit to the requesting state, pursuant to the conditions necessary for granting extradition, referred to in Article 34 and 35 of this Act.*

*(2) Request for transit of extradited person through the state territory of the Republic of Croatia has to contain all data referred to in Article 43 of this Law.*

#### **iii. Procedures**

See Articles 5 to 15 of ETS 112.

### **(15) VALIDITY OF FOREIGN JUDGMENTS**

Law on mutual legal assistance in criminal matters – Chapter V – Article 70 to Article 80.

### 2.3.5 Contact details of competent authorities and list of contact points

Ministry of Justice, Administration and Local authorities.	<p><b>Mr Dinko KOVACEVIC</b>  <b>Chief of the division regarding extradition matters</b>  Republike Austrije 14  Zagreb  Tel + 385 1 6710 680  Fax + 385 1 6710 672  E-mail :  dkovacevic@pravosudje.hr</p> <p><b>Ms Marina UZELAC</b>  Junior legal adviser  Republike Austrije 14  Zagreb  Tel + 385 1 371 0793  Fax + 385 1 371 0672  E-mail: muzelac@pravosudje.hr</p>	<p>Issues:  Extradition, transfer of sentenced persons, mutual legal assistance</p> <p>Issues:  Mutual legal assistance</p> <p>Languages spoken: English</p>
Ministry of the Interior	<p><b>Ms Jelena PEDISIC</b>  INTERPOL Police Officer  Ilica 335  10000 Zagreb  Tel + 385 1 378 8829  Fax + 385 1 370 4878</p>	<p>Issues:  Extradition, transfer of sentenced persons, mutual legal assistance</p>
District attorney Office in Zagreb	<p><b>Mr Drazen JELENIC</b>  Deputy Head of USKOK  Zagreb  Gajeva 30a  Tel + 385 1 4591 874  Fax + 385 1 4591 878  E-mail: marinka.orlic@uskok.hr  uskok.zg@uskok.hr</p>	<p>Issues:  Mutual legal assistance (transfer of proceedings, letters rogatory)</p>



## 2.4 KOSOVO

### 2.4.1 Extradition procedures

#### (1) LEGAL BASIS

##### i. Multilateral treaties and conventions

Until March 17, 2009 the Department of Justice of UNMIK was the only competent authority in the field of International Judicial cooperation (IJC). On this date the Minister of Justice has issued the Order No. 2009/01-303, according to which the Ministry took over all the competences in the area of International Judicial Cooperation, including extradition.

Due to the fact that it was only recently that the Ministry of Justice has become in charge of International Judicial Cooperation, there have not been any Multilateral Extradition Treaties signed as yet.

**Conventions:** Kosovo is not party to the European Convention on Extradition of December 13, 1957.

##### ii. Bilateral treaties

There have been no bilateral treaties related to extradition procedures signed up to the moment when this text was prepared.

It is worth mentioning that Kosovo, namely the Ministry of Justice is in the process of negotiating a Bilateral Agreement on Extradition with "the former Yugoslav Republic of Macedonia". This bilateral agreement was expected to be concluded in the first 6 months of 2010.

The Ministry of Justice has proposed to a number of countries in the region and EU member states to start negotiations in order to sign agreements on extradition.

##### iii. National legislation

**Article 35 (4)** of the Constitution of Kosovo stipulates:

"The citizens of [...] Kosovo shall not be extradited against their will, with the exception of cases when differently provided in the law and international agreements."

**Article 19 – Applicability of International Law** – of the Constitution stipulates that :

"1. International agreements ratified by [...] Kosovo become part of the internal legal system after their publication in the Official Gazette of [...] Kosovo. They are directly applied except when they are not self-applicable and the application requires the promulgation of a law.

2. Ratified International Agreements and the legally binding norms of the international law prevail over the laws of [...] Kosovo."

The Criminal Procedure Code of Kosovo (CPC), Chapter XLVII – Procedures for Granting International Legal Assistance and the Execution of International Agreements in Criminal Matters (Articles 506-533).

#### (2) DETENTION OF THE REQUESTED PERSON

##### i. Provisional arrest for extradition (conditions and channel of communication)

###### *Upon request*

Article 518/1 of the Provisional Criminal Procedure Code of Kosovo foresees that proceedings for the transfer to a foreign jurisdiction of a foreign national who is a defendant or a convicted person shall be initiated upon the request of a foreign country.

Article 547 (4) of the CPC states the following:

Upon the request of a foreign authority, the competent public entity in the field of internal affairs may distribute a wanted notice for a person suspected of being in Kosovo, provided the foreign authority states in the request that it will request the transfer of such person if he or she is found.

Article 520 of the Provisional Criminal Procedure Code states:

(1) In urgent cases where there is a danger that the foreign national might flee or go into hiding, the police shall be allowed to arrest the foreign national upon a request by a competent foreign authority, irrespective of the manner in which this request is sent. The request should contain necessary data for establishing the

identity of the foreign national, the nature and name of the criminal offence, the number of the decision together with the date, the place and address of the foreign authority which ordered detention on remand and the statement that transfer to a foreign country shall be requested through the regular channels.

(2) The police shall without any delay bring the arrested foreign national before a pre-trial judge of the competent court who shall conduct a hearing in accordance with Article 282 of the present Code. If the pre-trial judge orders detention on remand against the foreign national, the pre-trial judge shall inform the competent public entity in the field of internal affairs.

(3) The pre-trial judge shall release the foreign national if the grounds for detention on remand cease to exist or if the request for his or her transfer to a foreign country is not filed within the period of time determined by him or her. The period of time shall be determined taking into consideration the distance of the requesting country from Kosovo and shall not exceed three months from the day the foreign national was detained. The foreign country shall be notified of this period of time. Upon a request by the foreign country, a three-judge panel of the competent court may extend this period by a maximum of two months.

Article 1 (1.1) of the UNMIK Regulation (UNMIK/REG/2000/14) – ON THE EXTENSION OF CUSTODY OF PERSONS HELD PENDING THE REQUEST FOR EXTRADITION – states that:

In addition to the five months maximum period of custody permitted pursuant to Article 528 of the applicable Criminal Procedure Law pending the proper completion of a petition for the extradition of a person from Kosovo, an examining judge of the competent District Court may, in order to ensure the proper administration of justice, extend custody by not more than one (1) additional month.

### ***Without request***

Although in practice extradition never takes place without a request, it is not regulated in a specific way by the CPCK.

## **ii. Arrest for extradition (conditions and channel of communication)**

### ***Obligatory***

Articles 518 and 520 of the CPCK define the conditions and channels of communication in the cases of Arrest and Extradition.

As stated in Article 518 (2) and Article 520 (3) the request for transfer/ extradition shall be filed through diplomatic channels. The notification of the country interested in the extradition shall be made through the same channels.

### ***Non-obligatory***

Not defined by the law.

## **(3) CHANNELS OF COMMUNICATION FOR EXTRADITION REQUESTS**

The use of diplomatic channels is the only possible way. The request is filed through diplomatic channels. (Article 508/2).

## **(4) FORM AND CONTENT OF REQUESTS FOR EXTRADITION**

As regards the form and content of the Extradition requests, both to and from Kosovo, Article 529 of the CPCK states the following:

### **Article 529**

(1) If criminal proceedings are pending in Kosovo against a person who resides in a foreign country, or if that person has been punished by a domestic court, the competent authority may file a request for his or her transfer to Kosovo.

(2) The request shall be sent to a foreign country through diplomatic channels, together with the documents and data under Article 518 of the present Code

### **Article 518**

Proceedings for the transfer to a foreign jurisdiction of a foreign national who is a defendant or a convicted person shall be initiated upon the request of a foreign country.

(2) The request shall be filed through diplomatic channels.

(3) The request for transfer shall enclose:

1) The means for identifying the defendant or convicted person (accurate description, photographs, fingerprints and similar);

- 2) A certificate or other data on the citizenship of the foreign national;
  - 3) The indictment, or judgment, or ruling on detention or another equivalent document, in the original or a certified copy. These papers shall contain: the name and surname of the person whose transfer is requested and other data necessary to establish his or her identity, the description of the act, the legal qualification of the criminal offence and the evidence on which the suspicion rests; and
  - 4) An extract from the criminal law of the foreign country to be applied, or which was applied, against the defendant in regard to the act which prompted the request for transfer; if the act was committed in a third country, an extract from the criminal law of that country.
- (4) If the request and annexes are written in a foreign language, a certified copy of a translation in accordance with Article 15 paragraph 1 of the present Code shall be enclosed.

## **(5) GROUNDS FOR REFUSAL OF AN EXTRADITION REQUEST**

### **i. Mandatory grounds**

This issue is regulated by Article 35 para. 4 of the Constitution of Kosovo:

"The citizens of [...] Kosovo shall not be extradited against their will, with the exception of cases when differently provided in the law and international agreements".

Article 517 of the Penal Procedure Code requires the fulfilment of certain conditions for the extradition; if the request from the foreign country does not fulfil these prerequisites, then the request is refused.

The prerequisites for the transfer of a person to a foreign jurisdiction are:

- 1) That the person whose transfer to a foreign jurisdiction is requested is a foreign national;
- 2) That the act which prompted the request for the transfer was not committed on the territory of Kosovo or against a resident of Kosovo;
- 3) That the act which prompted the request for the transfer constitutes a criminal offence under the applicable law in Kosovo and under the law of the jurisdiction where it was committed;
- 4) That under the applicable law in Kosovo criminal prosecution or the execution of punishment was not barred by the period of statutory limitation before the foreign national was detained on remand or examined as a defendant;
- 5) That the foreign national whose transfer is requested has not already been finally acquitted or convicted by a domestic court of the criminal offence for which his or her transfer is sought, that criminal proceedings are not being conducted in Kosovo against him or her for a criminal offence set forth in Article 100 of the Provisional Criminal Code and, in the event that criminal proceedings have been initiated for an act committed against a resident of Kosovo, that the property claim of the injured party has been secured;
- 6) That the identity of the person whose transfer is requested has been established;
- 7) That there is sufficient evidence to support a well-grounded suspicion that the foreign national whose transfer is requested has committed the particular criminal offence, or that a final judgment exists thereon;
- 8) That the transfer is not sought for a crime for which capital punishment is prescribed unless the state seeking the transfer provides guarantees that the capital punishment shall not be imposed or carried out;
- 9) That there is not a real risk that the person whose transfer is sought will face inhuman or degrading treatment or punishment;
- 10) That there are no grounds for suspicion that a request has been made for the purpose of prosecuting or punishing the person whose transfer is sought on account of his or her race, gender, national or ethnic origin, religion, political opinion or membership of a particular social group;
- 11) That the person whose transfer is sought does not enjoy the protections accorded to refugees in Kosovo;
- 12) That the request for transfer is not made in respect of a political act, where such act shall not be considered to include a criminal offence under Articles 116 through 145 of the Provisional Criminal Code; and
- 13) That transfer is not contrary to international law or international human rights standards for any reason. (see Article 532 CPP).

Extradition may be allowed only when:

- 1) the person whose transfer to a foreign jurisdiction is requested is a foreign national
- 2) That the request for transfer is not made in respect of a political act, where such act shall not be considered to include a criminal offence under Articles 116 through 145 of the Provisional Criminal Code;
- 3) That transfer is not contrary to international law or international human rights standards for any reason

### **ii. Optional grounds**

Article 533 states:

Notwithstanding Article 517 subparagraph 1 of the present Code, a resident of Kosovo may be transferred to a foreign jurisdiction if:

- 1) His or her transfer is permitted by an international agreement; and
- 2) All the prerequisites for transfer set forth in Article 517 of the present Code, except for subparagraph 1, are met. In such case the provisions of the present chapter shall apply *mutatis mutandis*.

## **(6) ISSUING AND EXECUTING AN EXTRADITION REQUEST**

### **i. Competencies of the national authorities involved in the procedure**

The Ministry of Justice is the competent authority for processing both outgoing and incoming requests. The Territorial Courts and the Courts having jurisdiction over specific cases are the competent authority which takes a decision upon the case. The Public Prosecution office is the competent authority for the investigation of the case, whereas the Kosovo Police carries out the execution of requests.

#### ***Outgoing requests***

The requests made by Kosovo to foreign countries are regulated by Article 529, paragraph 2 and Article 518 of the Criminal Procedure Code of Kosovo.

#### **Article 529**

(1) (1) If criminal proceedings are pending in Kosovo against a person who resides in a foreign country, or if that person has been punished by a domestic court, the competent authority may file a request for his or her extradition to Kosovo.

(2) The request shall be sent to a foreign country through diplomatic channels, together with the documents and data under Article 518 of the present Code.

#### **Article 518**

(1) Proceedings for the transfer to a foreign jurisdiction of a foreign national who is a defendant or a convicted person shall be initiated upon the request of a foreign country.

(2) The request shall be filed through diplomatic channels.

(3) The request for transfer shall enclose:

1) The means for identifying the defendant or convicted person (accurate description, photographs, fingerprints and similar);

2) A certificate or other data on the citizenship of the foreign national;

3) The indictment, or judgment, or ruling on detention or another equivalent document, in the original or a certified copy. These papers shall contain: the name and surname of the person whose transfer is requested and other data necessary to establish his or her identity, the description of the act, the legal qualification of the criminal offence and the evidence on which the suspicion rests; and

4) An extract from the criminal law of the foreign country to be applied, or which was applied, against the defendant in regard to the act which prompted the request for transfer; if the act was committed in a third country, an extract from the criminal law of that country.

#### ***Incoming requests***

According to Article 519, paragraph 1 of the CPPK the competent authority shall transmit the request for the transfer of a foreign national through the competent public entity in the field of judicial affairs to the pre-trial judge of the district court in whose territory the foreign national currently resides or in whose territory he or she is to be found.

### **ii. Procedure**

#### ***Rule of speciality***

Article 526 of the CPP states:

(1) In the ruling by which he or she grants the transfer of a foreign national the competent authority shall state that:

1) The foreign national may not be prosecuted for another criminal offence committed prior to the transfer;

2) He or she may not be punished for another criminal offence committed prior to his or her transfer;

3) A more severe punishment than the one by which he or she was punished may not be imposed upon him or her; and

4) He or she may not be surrendered to a third country for prosecution for a criminal offence which he or she had committed before his or her transfer was granted.

(2) In addition to these conditions the competent authority may order also other conditions for transfer.

#### ***Simplified extradition procedure***

Not defined by the law.

### ***Surrender of the person***

The surrender of the person is regulated by Articles 526 and 527 of the CPPK

#### **Article 526**

In the ruling by which he or she grants the transfer of a foreign national the competent authority shall state that:

- 1) The foreign national may not be prosecuted for another criminal offence committed prior to the transfer;
  - 2) He or she may not be punished for another criminal offence committed prior to his or her transfer;
  - 3) A more severe punishment than the one by which he or she was punished may not be imposed upon him or her; and
  - 4) He or she may not be surrendered to a third country for prosecution for a criminal offence which he or she had committed before his or her transfer was granted.
- (2) In addition to these conditions the competent authority may order also other conditions for transfer.

Article 527 states that:

- (1) The ruling regarding transfer shall be communicated to the foreign country through diplomatic channels.
- (2) The ruling by which transfer is granted shall be forwarded to the competent public entity in the field of internal affairs which shall order that the foreign national be transported to an appointed place where he or she shall be surrendered to the authorities of the foreign country which had requested transfer.

### ***Postponed or conditional surrender***

It has not been specially regulated. (See Article 514 and 517 of the CPCK)

### ***Extradition procedures in Kosovo***

The transfer procedures are regulated by article 519 of the CPPK, which stated that:

- (1) The competent authority shall transmit the request for the transfer of a foreign national through the competent public entity in the field of judicial affairs to the pre-trial judge of the district court in whose territory the foreign national currently resides or in whose territory he or she is to be found.
- (2) If the permanent or current residence of the foreign national whose transfer is requested is not known, his or her whereabouts shall first be established through the police.
- (3) If the request complies with the conditions under Article 518 of the present Code, and if there are grounds for detention on remand under Article 281 of the present Code, the pre-trial judge shall order that the foreign national be detained on remand or shall take other steps to secure his or her presence, unless it is clear from the request itself that the transfer is impermissible.
- (4) The pre-trial judge shall immediately upon establishing the identity of the foreign national inform him or her why and on what grounds his or her transfer is requested and shall instruct him or her that he or she may engage a lawyer or shall appoint one for him or her *ex officio* in accordance with Articles 73 and 74 of the present Code or if detention on remand against the foreign national has been ordered. The pre-trial judge shall then invite the foreign national to make statements in his or her defence.
- (5) The examination and the statement of the foreign national shall be entered in the record.

## **(7) SPECIAL RULES ON NATIONALS**

### **i. Extradition of nationals**

Article 35, paragraph 4 of the Constitution of Kosovo states that :

"The citizens of [...] Kosovo shall not be extradited against their will, with the exception of cases when differently provided in the law and international agreements.".

Article 533 states:

Notwithstanding Article 517 subparagraph 1 of the present Code, a resident of Kosovo may be transferred to a foreign jurisdiction if:

- 1) His or her transfer is permitted by an international agreement; and
- 2) All the prerequisites for transfer set forth in Article 517 of the present Code, except for subparagraph 1, are met. In such case the provisions of the present chapter shall apply *mutatis mutandis*.

### **ii. Institution of criminal proceedings against non-extradited nationals**

#### **Article 515**

- (1) The request of a foreign country for Kosovo to prosecute a resident of Kosovo for a criminal offence committed abroad shall be transmitted, together with the files, to the competent public prosecutor in whose territory that person has permanent residence.

(2) A property claim filed with the competent authority of a foreign country shall be treated as if it has been filed with the competent court.

(3) Information about the refusal to undertake criminal prosecution and the final decision rendered in criminal proceedings shall be sent to the foreign country which requested that Kosovo assume prosecution.

#### **(8) LANGUAGE OF THE REQUEST/TRANSLATION**

Article 5 para. 1 of the Constitution of Kosovo states that the official languages in Kosovo are Albanian and Serbian.

## 2.4.2 Requests for instituting proceedings & transfer of proceedings

### (9) REQUESTS FOR INSTITUTING CRIMINAL PROCEEDINGS

Foreign requests for instituting criminal proceedings in Kosovo against a resident of Kosovo.

Article 515 of the CPPK

Procedure

If a resident of Kosovo commits a criminal offence in another country, the country where the offence has been committed may file a request through diplomatic channels. The request shall be sent to the Ministry of Justice, Legal Department, Division for International Judicial Cooperation, which transmits it to the competent district prosecution office. If the criminal offence is under the jurisdiction of the Communal Prosecution Office, the District Prosecution Office shall submit the request to the competent Communal Prosecution Office for further procedures to be followed.

Information about the refusal to undertake criminal prosecution and the final decision rendered in criminal proceedings shall be sent to the foreign country which requested that Kosovo assume prosecution through the diplomatic channels.

#### ***Transfer of proceedings against a foreign national to a foreign jurisdiction***

The request to transfer the criminal proceedings against a foreign national to a foreign jurisdiction is initiated by the Public Prosecutor of Kosovo through a request for transfer.

Article 514 CPCK

Procedure

A request to transfer the criminal proceedings to a foreign authority should be sent to the competent court by the prosecutor.

If the request of the prosecution is accepted by the court, the file for criminal prosecution and adjudication may be surrendered to the foreign country through the Ministry of Justice, Legal Department, Division for International Judicial Cooperation.

#### **i. Legal basis**

##### ***Multilateral treaties and conventions***

None

##### ***Bilateral treaties***

None

##### ***National legislation***

Based on Article 533 of the CPC:

Notwithstanding Article 517 subparagraph 1 of the present Code, a resident of Kosovo may be transferred to a foreign jurisdiction if:

- 1) His or her transfer is permitted by an international agreement; and
- 2) All the prerequisites for transfer set forth in Article 517 of the present Code, except for subparagraph 1, are met. In such case the provisions of the present chapter shall apply *mutatis mutandis*.

#### **ii. Conditions**

Not defined by the law.

#### **iii. Procedure**

In general the same as for foreign nationals.

## **(10) TRANSFER OF PROCEEDINGS**

### **i. Legal basis**

#### ***Multilateral treaties and conventions***

Since March 17, 2009 the Ministry of Justice is the only competent authority in the field of International Judicial cooperation (IJC), including the International Legal Assistance.

Kosovo is not party to the European Convention on the Transfer of Criminal Proceedings of 15 May 1972.

#### ***Bilateral treaties***

None.

#### ***National legislation***

Articles 514, 515 of the Criminal Procedure Code

### **ii. Conditions**

Article 514 of the Criminal Procedure Code

If a foreign national who permanently resides in a foreign country commits a criminal offence on the territory of Kosovo, all files for criminal prosecution and adjudication may, beside the conditions under Article 517 of the present Code, be surrendered to the foreign country for the purpose of criminal prosecution and adjudication, if it agrees to receive them.

(2) The decision to surrender files in the criminal proceedings is rendered during the pre-trial proceedings by the three-judge panel upon the motion of the public prosecutor.

(3) The surrender of criminal files may be allowed where criminal offences punishable by imprisonment of up to ten years are involved, as well as in the case of a criminal offence against the security of public traffic.

(4) The surrender of criminal files shall not be allowed if the injured party is a resident of Kosovo and he or she opposes it, except if his or her property claim has been secured.

(5) If the accused is in detention on remand, the foreign country shall be requested by the fastest means to report within thirty days whether it will undertake prosecution.

Article 515

The request of a foreign country for Kosovo to prosecute a resident of Kosovo for a criminal offence committed abroad shall be transmitted, together with the files, to the competent public prosecutor in whose territory that person has permanent residence.

(2) A property claim filed with the competent authority of a foreign country shall be treated as if it has been filed with the competent court.

(3) Information about the refusal to undertake criminal prosecution and the final decision rendered in criminal proceedings shall be sent to the foreign country which requested that Kosovo assume prosecution.

### **iii. Procedure**

Not defined by the law.



## 2.4.3 Procedures for mutual legal assistance

### (11) LETTERS ROGATORY

#### i. Legal basis

Article 506 (1) of the CPCK:

International legal assistance in criminal matters shall be administered in accordance with the provisions of the present Code unless otherwise provided for by international agreements.

#### ***Multilateral treaties and conventions***

None.

#### ***Bilateral treaties***

Negotiations with “the former Yugoslav Republic of Macedonia” are under way. A bilateral treaty with this country is expected to be signed after the first 6 months of 2010. The Ministry of Justice has proposed such negotiations of a reciprocal interest to a considerable number of countries.

#### ***National legislation***

Chapter XLVII – Procedures for Granting International Legal Assistance and the Execution of International Agreements in Criminal Matters (Articles 506-533).

#### ii. Channels of communication (sending, receiving and returning of requests)

##### ***Through central authorities***

Based on Article 507 (3) of CPC:

On the basis of reciprocity or if so determined by an international agreement, international legal assistance in criminal matters may be exchanged directly between an organ of Kosovo and a foreign organ which participates in preliminary proceedings and in criminal proceedings, wherein modern technical assets, in particular computer networks and aids for the transmission of pictures, speech and electronic impulses may be used.

##### ***Through diplomatic channels***

Based on Article 507(1) of the CPCK, a request of a domestic court for legal assistance in criminal matters shall be transmitted to foreign agencies through diplomatic channels. A foreign request for legal assistance from domestic courts shall be transmitted in the same manner.

##### ***Through direct contacts***

Not defined by the law.

#### iii. Form and content of requests for mutual legal assistance

##### ***Information to be included in a request***

Not defined by the law.

##### ***List of measures which may be provided***

The legislation states that measures should be taken, but it does not specify what these measures are.

##### ***Specific requirements: dual criminality/reciprocity***

The aim of the Kosovo authorities is to contribute to the unity of countries in the fight against crime, so that this fight becomes more efficient. In order to achieve this aim, a spirit of reciprocal trust is needed. The principle of reciprocity is included in the CPCK which allows for the local courts to act upon requests sent by foreign countries regarding the execution of a judgment passed by a foreign court against a resident of Kosovo, provided that this is foreseen by international agreements or is carried out based on the principle of reciprocity.

***Language of the request/translation***

The official languages are Albanian and Serbian. English is also accepted (preferred).

**iv. Grounds for refusal of an assistance request**

Not provided for in the CPCK.

**v. Issuing and executing a request**

***Competencies of the national authorities***

Not specified.

***Procedure***

Not defined by the law.

**vi. Costs of assistance**

Not defined by the law.

**(12) REQUESTS FOR SERVING OF SUMMONSES, JUDGMENTS AND OTHER PROCEDURAL DOCUMENTS**

None.

**(13) EXCHANGE OF CRIMINAL RECORDS**

None.

## **2.4.4 Transfer of sentenced persons & validity of foreign judgments**

### **(14) TRANSFER OF SENTENCED PERSONS**

#### **i. Legal basis**

Article 512 of the Criminal Procedure Code of Kosovo – REQUESTS FOR THE EXECUTION OF FOREIGN JUDGMENTS

With respect to execution of foreign judgments the provisions of Article 509 are as follows: domestic court may grant a request of a foreign authority to execute a judgment of conviction of a resident of Kosovo passed by a foreign court, if so provided by international agreement or on the basis of reciprocity.

(2) A request for execution shall be accompanied by the original or certified copy of the judgment of conviction whose enforcement is requested and other necessary documents.

(3) In an instance under paragraph 1 of the present article, the domestic court shall execute the sanction imposed by the final judgment of a foreign court by rendering a judgment to impose a sanction in accordance with the applicable law of Kosovo.

#### **ii. Conditions**

Article 517 of the KPP.

#### **iii. Procedures**

See Article 518 of the CPP.

### **(15) VALIDITY OF FOREIGN JUDGMENTS**

#### **i. Legal basis**

Article 509 of the Criminal Procedure Code of Kosovo.

#### **ii. Conditions**

Article 509(2) A request for execution shall be accompanied by the original or certified copy of the judgment of conviction whose enforcement is requested and other necessary documents.

## 2.5 MONTENEGRO

International legal assistance in criminal matters is provided on the basis of multilateral and bilateral treaties, and if there is no international agreement or if certain issues are not regulated under an international agreement, domestic legislation applies. Montenegro is a signatory to numerous bilateral and international conventions dealing with international legal assistance, which provides a positive legal framework for the strengthening of judicial co-operation both in the region and with the Member States of the Council of Europe. The main treaties dealing with international legal assistance in criminal matters are the following:

- European Convention on mutual legal assistance in criminal matters (ETS No. 030), with two additional protocols (ETS No. 099 and No. 182),
- European Convention on extradition (ETS No. 024), with two additional protocols (ETS No. 086 and No. 098),
- Convention on the transfer of sentenced persons (ETS No. 112), with the additional protocol (ETS No. 167),
- European convention on the transfer of proceedings in criminal matters (ETS No. 073).

Furthermore, there are numerous bilateral treaties which regulate the mutual assistance procedure in a great detail, especially with the states in the region with which the legal exchange is very complex and diversified. Finally, the provision of legal assistance is regulated in a unified way by a special law, i.e. the Law on mutual assistance in criminal matters which was adopted in December 2007. The Law provides that the Ministry of Justice shall be the central authority in the communication between domestic and foreign judicial authorities. However, having in mind the need to accelerate the provision of mutual assistance and reasons of urgency and purposefulness of taking action within a certain deadline, the Law, as well as a majority of international treaties, provides for a possibility of direct communication between domestic and foreign judicial authorities or communication through the International criminal police organisation (INTERPOL).

### 2.5.1 Extradition procedures

#### (1) LEGAL BASIS

##### i. Multilateral treaties and conventions

- See the European Convention on Extradition (ETS 024) and its two Additional Protocols (ETS 086 and ETS 098).
- United Nations Convention against transnational organised crime and the Protocol to prevent, suppress and punish trafficking in persons, especially women and children

##### ii. Bilateral treaties

- **Albania:** Treaty between the Kingdom of Slovenians, Croats and Serbs and the National Republic of Albania on extradition of convicted persons, Articles 1 to 14 (22.06.1926 entered into force on 17.05.1929)
- **Bulgaria :** Treaty between the Federal National Republic of Yugoslavia and the National Republic of Bulgaria on mutual legal assistance, Articles 73 to 86 (23.03.1956 entered into force 17.01.1957)
- **Hungary:** Treaty between the Socialist Federal Republic of Yugoslavia and Hungary on mutual legal assistance, Chapter II, Articles 84-104 (07.03.1968 entered into force on 18.01.1969)
- **Romania:** Treaty between the Socialist Federal Republic of Yugoslavia and the Republic of Romania on mutual legal assistance, Chapter II, Articles 68 to 84 (18.10.1960 entered into force on 01.10.1961)
- **Serbia:** Treaty between Montenegro and Serbia on extradition (29.05.2009 entered into force on 29.05.2009)
- **"The former Yugoslav Republic of Macedonia":** Treaty between Serbia and Montenegro and "The former Yugoslav Republic of Macedonia" on legal assistance in civil and criminal matters, Art. 37 to 50 (06.07.2004 entered into force on 31.12.2004)

##### iii. National legislation

- Article 9 of the Constitution of Montenegro (OG of Montenegro, No. 01/07): Ratified and published international treaties and widely acclaimed rules of international law make an integral part of the domestic legal order, have supremacy over domestic legislation and apply directly when they regulate relationships in a manner different than the one regulated by domestic legislation.
- Law on mutual legal assistance in criminal matters (OG of Montenegro, No. 4/08), Chapter II, Art. 10-33

## (2) DETENTION OF THE REQUESTED PERSON

### i. Provisional arrest for extradition (conditions and channel of communication)

#### *Upon request*

For countries parties to ETS 024: it is possible according to its article 16 via INTERPOL in principle.

For all countries: it is possible according to Article 32 of the Law on mutual legal assistance in criminal matters.

- **Serbia:** It is possible according to Article 14 of the bilateral treaty, in urgent cases also on the basis of an explicit request of the competent authority of the requesting state. The request indicates that there is an intention of sending a request for extradition. The request contains the data on the criminal offence for which extradition will be requested, the time and venue of the execution of the request, information on the prescribed or pronounced sanction, or its remaining part, as well as a description, if possible, of the person whose extradition will be requested.
- **“The former Yugoslav Republic of Macedonia”:** It is possible according to Article 43 of the bilateral treaty, in urgent cases also on the basis of an explicit request of the competent authority of the requesting state. The request shall be supported with an order for provisional arrest or another document of the same legal effect, with a note that a request for extradition will be submitted later. Provisional arrest will be terminated if the request for extradition and required additional documents are not submitted to the requested state within 18 days of the date of the arrest.

#### *Without request*

- **Albania:** it is possible according to Article 8 paragraph 2 of the bilateral treaty
- **Bulgaria:** it is possible according to Article 75 paragraph 5 of the bilateral treaty. The competent courts or organs of the requesting country could order the provisional arrest, even without request, provided by Article 93 paragraph 1 of the bilateral treaty, of the person which is on their territory, if they find out that this person committed a criminal offence on the territory of the other state party for which offence extradition is allowed, and then these organs are obliged to inform the country whose arrested person is the citizen.
- **Hungary:** it is possible according to Article 93 paragraph 4 of the bilateral treaty, same provision as the one in the bilateral treaty with Bulgaria.
- **Romania:** it is possible according to Article 73 paragraph 2 of the bilateral treaty, if there is enough evidence that the requested person committed an offence for which extradition is requested.

### ii. Arrest for extradition (conditions and channel of communication)

#### *Obligatory*

It is possible according to Article 16, paragraph 3 of the Law on mutual legal assistance in criminal matters.

After formal request for extradition from:

- **Albania:** according to Article 8 paragraph 2 of the bilateral treaty. The Government of the requested country will order the arrest of the requested person immediately after having received the extradition request with the additional documents.
- **Romania:** according to Article 74 of the bilateral treaty, the requested country will take all necessary measures for finding and arresting the requested person if the conditions for extradition resulted from the extradition request and the additional documents.

#### *Non-obligatory*

- **Bulgaria:** according to Article 74 of the bilateral treaty, if all the conditions for extradition are satisfied, the requested country could order the arrest of the requested person.
- **Hungary:** according to Article 92 paragraph 1 of the bilateral treaty, if all conditions for extradition are satisfied, the requested country can order the arrest of the requested person if this is necessary needed.
- **Serbia:** according to Article 13 of the bilateral treaty, the requested state may, in accordance with its legislation, order the arrest if the formal conditions for extradition have been met.

### **(3) CHANNELS OF COMMUNICATION FOR EXTRADITION REQUESTS**

According to article 5 of ETS 098 in connection with article 12 of ETS 024, the request for extradition is sent through the ministries of justice. The diplomatic channel is not excluded.

The central authority responsible for communication between domestic and foreign authorities is the Ministry of Justice (at Vuka Karadžića St. 3, 20000 Podgorica, Crna Gora/Montenegro).

### **(4) FORM AND CONTENT OF REQUESTS FOR EXTRADITION**

For parties to ETS 024: see article 12.

If there is no treaty, the Law on mutual assistance in criminal matters, Art. 15, provides that the following shall be enclosed to the letter rogatory:

- means required to establish the identity of the accused and/or of the sentenced person (accurate description, photographs, fingerprints and the like);
- the certificate or other information on the nationality of the person claimed;
- the indictment, verdict or detention order, or any other document equivalent to indictment, original or notarized copy, which shall contain the forename and surname of the person claimed and other information necessary to establish his identity, description of the offence, legal qualification of the offence and evidence for a grounded suspicion;
- the excerpt from the wording of the criminal law of the requesting country which is to be applied or which has been applied against the accused for the offence for which extradition is requested, and if the offence was committed in the territory of a third country, the excerpt from the wording of the criminal law of that country as well.
- a certified translation into Montenegrin language of the data and documents referred to in this article.

### **(5) CONDITIONS FOR GRANTING EXTRADITION**

See the Law on mutual assistance in criminal matters, Article 11, paragraph 1, sub-paragraphs 1 to 8:

(1) Preconditions for extradition shall be the following:

- If the person subject to extradition, is not a national of Montenegro
- if an offence for which extradition is requested is not committed in the territory of Montenegro, against it or its citizen;
- if an offence for which extradition is requested is a criminal offence according to both domestic law and law of a state where it is committed;
- if according to a domestic law the period of limitation for the institution of prosecution or for the execution of punishment has not expired, or if amnesty is not granted;
- if a foreigner whose extradition is requested has not already been sentenced by a domestic court for the same offence, or has not been acquitted for the same offence by a final judgment rendered by the domestic court, except when the conditions specified by the Criminal Procedure Code for the reopening of the criminal proceedings are met, or if, for the same offence committed against Montenegro or a Montenegrin citizen, criminal proceedings have not been instituted in Montenegro, but if proceedings have been instituted for an offence committed against a citizen of Montenegro – that a security to assert a claim for indemnification of the injured person is deposited;
- if an identity of the person whose extradition is requested is established;
- if there is enough evidence for a reasonable suspicion that a foreigner, whose extradition is requested, has committed a certain offence or if a final judgment exists.
- if it does not concern a minor offence, in accordance with the Criminal Code.

## (6) GROUNDS FOR REFUSAL OF AN EXTRADITION REQUEST

### i. Mandatory grounds

Extradition shall not be allowed unless the requirements specified in Article 11 of the Law on mutual legal assistance in criminal matters have been met, or for political criminal offence, an offence connected with a political criminal offence or a military criminal offence within the meaning of the European Convention on Extradition (Article 12). This prohibition does not apply to criminal offences of genocide, crimes against humanity, war crimes and terrorism.

Also, Article 22, paragraphs 3 and 4 provide that the Minister of Justice shall not grant the extradition of the person who enjoys the right of asylum in Montenegro or where it can be reasonably assumed that the person requested shall be subjected to prosecution or punishment because of his race, religion, nationality, belonging to a specific social group or for his political beliefs, or that his status would be made more difficult for one of these reasons. The Minister shall refuse the extradition if the person requested has not been given the possibility to have a defence attorney in the criminal proceedings preceding the extradition.

Bilateral treaties:

- **Albania:** Article 3, 4, 6 of the bilateral treaty – own national, political offence, military offence, lapse of time;
- **Bulgaria:** Article 70, 71 paragraph 1 and Article 72 – own national, final judgment, lapse of time, political offence, military offence;
- **Hungary:** Articles 88, 89, 90 – own national, final judgment, political offence, military offence;
- **Romania:** Article 69 – political offence, military offence, if offence is committed on territory of the requested country, lapse of time, final sentence, if is needed private suit.
- **Serbia:** Article 8 – national of the requested state, asylum, if offence is committed in the territory of the requested country, political offence, military offence, if offence is not offence under the legislation of the requested state and the state on the territory of which it has been committed, lapse of time, *ne bis in idem*, if criminal proceedings are pending against the person requested for extradition, in the requested state for the same offence;
- **“The former Yugoslav Republic of Macedonia”:** Article 39 – national of the requested state, if the extradition may not be granted under the constitution and laws of the requested state, if offence is committed in the territory of the requested state, political offence, military offence, lapse of time or amnesty, *ne bis in idem*, if criminal proceedings are pending against the person requested for extradition in the requested state for the same offence.

### ii. Optional grounds

According to Article 13 of the Law on mutual assistance in criminal matters, extradition shall not be granted for criminal offences for the criminal offence punishable under the domestic law and the law of the requesting state by imprisonment for a term of up to six months or a fine. If the extradition of the sentenced person is requested to serve the sentence, his extradition shall not be granted if the duration of the imposed imprisonment sentence or the remaining portion thereof which is yet to be served does not exceed four months.

## (7) ISSUING AND EXECUTING AN EXTRADITION REQUEST

### i. Competencies of the national authorities involved in the procedure

#### **Outgoing requests**

The Minister of Justice may submit the letter rogatory for extradition, after the request of the competent court (Article 31 of the Law on mutual legal assistance in criminal matters). The letter rogatory shall be submitted to the requested state through the central authority responsible for communication or through diplomatic channels, and it shall be accompanied by documents and information referred to in Article 15 of the Law.

#### **Incoming requests**

Article 15 of the Law on mutual legal assistance in criminal matters: The procedure for extradition of the accused or sentenced person shall be initiated upon the letter rogatory of the requesting state, which shall be delivered to the Ministry of Justice. See Article 16, paragraph 1: The Ministry shall deliver letter rogatory for the extradition to the investigating judge of the court within the jurisdiction of which the person requested resides or is located.

## ii. Procedure

### *Rule of speciality*

Article 23 of the Law on mutual legal assistance in criminal matters:

(1) The Minister shall state in the ruling granting extradition the following:

- a) a foreigner cannot be prosecuted for other criminal offence, committed prior to extradition;
- b) a punishment, imposed for other criminal offence committed prior to extradition, cannot be executed against him;
- c) a more severe punishment than one he is sentenced with or a death penalty cannot be executed against him;
- d) a foreigner must not be extradited to a third state for the purpose of prosecution for a criminal offence committed prior to extradition.

(2) In addition to the mentioned conditions, the Minister may also set other conditions for extradition.

Bilateral treaties:

- **Albania:** Article 7 of the bilateral treaty – the extradited person cannot be tried only for the offence for which he/she was requested, as well as for offences committed before the extradition request, which are in connection with this offence, unless he wants to be tried for the other offences, and in that case the country which surrenders this person should be informed;
- **Bulgaria:** Article 80 of the bilateral treaty – the extradited person cannot be a subject of the criminal proceeding or execution of the criminal sentence for the offence committed before extradition, if that offence was not an assumption for extradition, and this person also cannot be surrendered to a third country for trial or execution of the criminal sentence without the permission of the country which extradited this person.
- **Hungary (Article 98), Romania (Article 77):** same provision exists in the bilateral treaty.

### *Simplified extradition procedure*

Article 29 of the Law on mutual legal assistance in criminal matters:

- (1) The person for the extradition of whom the foreign state submitted the letter rogatory if the conditions for extradition prescribed by this Law have been met may be extradited within a summary procedure if the person claimed consented.
  - (2) The consent referred to in paragraph 1 above shall be entered for the record before a competent court in accordance with the Criminal Procedure Code, in a way ensuring that the consent has been given voluntarily and that the person claimed has been aware of all consequences of such consent when the consent was given. The consent once given cannot be revoked.
  - (3) The decision on extradition in a summary procedure shall be passed by a competent court.
  - (4) The court shall notify without delay the Ministry about the decision referred to in paragraph 3 of this Article, and the Ministry shall inform the requesting state.
  - (5) The extradition within a summary procedure shall have the same force and effect as the extradition within an ordinary procedure.
- **Serbia:** It is possible according to Article 16 of the bilateral treaty, provided that the requirements of extradition have been met and that the person requested for extradition has made a statement before the competent court giving consent to the summary procedure.

### *Surrender of the person*

Article 24 of the Law on mutual legal assistance in criminal matters:

- (1) The requesting state shall be notified of the decision concerning extradition through diplomatic channels.
- (2) The decision granting extradition shall be submitted to the administration authority competent for police affairs which shall escort the person claimed to the border crossing where at an agreed place he will be surrendered to the authorities of the requesting state.

Possible for:

- **Albania:** Article 7 of the bilateral treaty
- **Bulgaria:** Articles 76 and 77 of the bilateral treaty
- **Hungary:** Articles 94 and 95 of the bilateral treaty
- **Romania:** Article 78 of the bilateral treaty
- **Serbia:** Article 18 of the bilateral treaty
- **“The former Yugoslav Republic of Macedonia”:** Article 44 and 47 of the bilateral treaty



### ***Postponed or conditional surrender***

Possible for:

- **Bulgaria:** Article 78 par 1 of the bilateral treaty
- **Hungary:** Article 96 par 2 of the bilateral treaty
- **Serbia:** Article 11 of the bilateral treaty
- **“The former Yugoslav Republic of Macedonia”:** Article 41 of the bilateral treaty

### ***Extradition procedures in Serbia and Montenegro***

See Art. 15 to 24 of the Law on mutual legal assistance in criminal matters:

- The letter rogatory is submitted to the Ministry of Justice
- The letter rogatory is then forwarded to the investigative judge of the competent court.
- The investigative judge of the court within the jurisdiction of which the person requested for extradition resides undertakes all necessary actions in order to detect and apprehend the person, after which further procedure is conducted to establish that the conditions for the extradition are fulfilled.
- Upon hearing the state prosecutor and the defence attorney of the person requested for extradition, the investigative judges may undertake other actions, if necessary, to establish that the conditions for the extradition are fulfilled.
- The investigative judge delivers the case files to the competent Chamber along with his opinion.
- If the Chamber of the competent court finds that the conditions for the extradition are fulfilled, it shall confirm it by passing a decision.
- The case is then delivered to the Minister of Justice to decide whether to grant the extradition.
- The decision on the letter rogatory for the extradition shall be communicated to the requesting state through diplomatic channels or through the central authority responsible for communication.

## **(8) SPECIAL RULES ON NATIONALS**

### **i. Extradition of nationals**

Not possible.

See Article 11, paragraph 1, sub-paragraph 1 of the Law on mutual legal assistance in criminal matters and Article 2 of the Constitution of Montenegro.

### **ii. Institution of criminal proceedings against non-extradited nationals**

For parties to ETS 024: it is done according to article 6.

## **(9) LANGUAGE OF THE REQUEST/TRANSLATION**

Requests must be sent in the official language of the requesting countries with translation into Montenegrin.

## 2.5.2 Requests for instituting proceedings & transfer of proceedings

### (10) REQUESTS FOR INSTITUTING CRIMINAL PROCEEDINGS

#### i. Legal basis

##### *Multilateral treaties and Conventions*

- The European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073).

##### *Bilateral treaties*

- **Croatia:** Treaty between SFRY and Republic of Croatia on legal assistance in civil and criminal matters (15.09.1979 entered into force on 15.03.1998)
- **Hungary:** it is possible according to the bilateral treaty between SFRY and Hungary on mutual legal assistance in civil and criminal matters (Part III, Chapter I, Article 82). States parties states are obliged to institute criminal proceedings against their own national who has committed an offence on the territory of the requested country, if that offence is an assumption for extradition; in accordance with their national legislation, upon a request of the other State party.
- **Romania:** Treaty on legal assistance between SFRY and Republic of Romania (8.10.1960)
- **Bosnia and Herzegovina:** Treaty between Serbia and Montenegro and Bosnia and Herzegovina on legal assistance in civil and criminal matters (24.02.2005 entered into force on 8.07.2005) Art. 39 to 42
- **Croatia:** Treaty between the Federal Republic of Yugoslavia and the Republic of Croatia on legal assistance in civil and criminal matters, Art. 28 to 31.
- **"The former Yugoslav Republic of Macedonia":** Treaty on legal assistance in civil and criminal matters, Art. 33 to 36.
- **Serbia:** Treaty between Montenegro and the Republic of Serbia on legal assistance in civil and criminal matters (29.05.2009 entered into force on 29.05.2009) Art. 44 to 47.

#### ii. National legislation

Law on international legal assistance in criminal matters: Chapter III. Article 36:

- (1) The request of the requesting state for Montenegro to assume the criminal prosecution of a national of Montenegro or a person whose residence is in Montenegro for the criminal offence committed in the requesting state, shall be delivered together with the files to the competent state prosecutor within the jurisdiction of whom that person resides.
- (2) If the property law claim has been lodged with the competent authority of the requesting state, action shall be undertaken as if it were presented to the competent court.
- (3) The requesting state shall be informed of the refusal to assume criminal prosecution as well as of the final and legally binding decision passed within the criminal proceedings, in accordance with Article 4 of the Law.

#### iii. Conditions

See above.

#### iv. Procedure

See above. The request of the requesting state to assume the criminal prosecution shall be delivered to the competent state prosecutor within the jurisdiction of whom the person to be prosecuted resides.

### (11) TRANSFER OF PROCEEDINGS

#### i. Legal basis

##### *Multilateral treaties*

See above.

***Bilateral treaties***

See above.

***National legislation***

Law on mutual legal assistance in criminal matters: Chapter III. Article 34:

- (1) If a foreigner whose place of residence is in a foreign state committed a criminal offence in the territory of Montenegro, that state can surrender the criminal files for the purpose of criminal prosecution and trial if the foreign state does not object to it, without prejudice to the conditions referred to in Article 11 of the Law.
- (2) Before passing the decision to conduct investigation, the decision to transfer criminal prosecution shall be taken by the competent state prosecutor; and if the decision was passed prior to the commencement of the main hearing, the decision to transfer criminal prosecution shall be taken by the Chamber of the competent court composed of three judges.
- (3) The decision to transfer criminal prosecution may be taken for the criminal offences punishable by imprisonment for a term of up to ten years and for the criminal offences of jeopardising public traffic.
- (4) If the victim is a national of Montenegro, the transfer of criminal prosecution shall not be allowed if the victim opposes to it, unless a security for the settlement of his property law claim has been provided.
- (5) If the accused is held in detention, it shall be requested from the requested state through the shortest possible means to inform the competent Montenegrin authority within fifteen days at latest whether it shall assume the prosecution.

**ii. Conditions**

See above:

- if the criminal offence was committed in the territory of Montenegro by a foreign national who has the permanent residence in a foreign state;
- for the criminal offences committed in the territory of Montenegro, which are punishable by imprisonment for a term of up to ten years, and for the criminal offences of jeopardising public traffic;
- the consent of the injured party, i.e. the person who has suffered damage as a consequence of the criminal offence, if the person concerned is a national of Montenegro
- if the foreign state does not oppose the transfer.

**iii. Procedure**

Article 35 of the Law on mutual legal assistance in criminal matters:

The competent court or the state prosecutor shall deliver the letter rogatory for the transfer of the criminal prosecution accompanied with the decision on the transfer of criminal prosecution and the case files to the Ministry.

The Ministry shall deliver the letter rogatory for the transfer of the criminal prosecution to the competent authority of the requested state in accordance with Article 4 of the Law.

## 2.5.3 Procedures for mutual legal assistance

### (12) LETTERS ROGATORY

#### i. Legal basis

##### *Multilateral treaties and conventions*

- The European Convention on Mutual legal Assistance in Criminal Matters (ETS 030) and its Additional Protocol (ETS 099).

##### *Bilateral treaties*

- **Albania:** Convention between the SFRY and Albania on extradition of convicted persons, Chapter B, Articles 14-18 (17.05.1929).
- **Bulgaria:** Treaty between the SFRY and the Republic of Bulgaria on mutual legal assistance Part II, Articles 54-65 (17.1.1957)
- **Croatia:** Treaty between the SFRY and the Republic of Croatia on legal assistance in civil and criminal matters, Chapter III, Articles 22-31 (15.03.1998)
- **Hungary:** Treaty between the SFRY and Hungary on mutual legal assistance, Part III, Chapter I, Articles 73-84 and Article 79a
- **Romania:** Treaty between the SFRY and the Republic of Romania on mutual legal assistance, Part III, Chapter I, Articles 59-67 (1.10.1961)
- **Serbia:** Treaty between Montenegro and the Republic of Serbia on legal assistance in civil and criminal matters. Chapter III. Art. 33 to 47 (29.05.2009)
- **Bosnia and Herzegovina:** Treaty between Serbia and Montenegro and Bosnia and Herzegovina on legal assistance in civil and criminal matters, Chapter III, Art. 32 to 38
- **“The former Yugoslav Republic of Macedonia”:** Treaty between Serbia and Montenegro and the Republic of Macedonia on legal assistance in civil and criminal matters, Part III, Art. 28 to 32

##### *National legislation*

- Article 9 of the Constitution of Montenegro: ratified and published international treaties and widely acclaimed rules of international law make an integral part of the domestic legal order, they have supremacy over domestic legislation and apply directly when they regulate relationships in a manner different than the one regulated by domestic legislation.
- Law on mutual legal assistance in criminal matters, Part I, Art. 2 to 8.

#### ii. Channels of communication (sending, receiving and returning of requests)

##### *Through the central authorities*

Domestic judicial authorities send requests for mutual legal assistance to foreign judicial authorities and receive requests for mutual legal assistance of foreign judicial authorities through the Ministry of Justice being the central authority responsible for communication.

- **Bulgaria:** Ministries of Justice of the state members of the State Union, Ministry of justice of the Republic of Bulgaria (Article 7 of the bilateral treaty);
- **Croatia:** according to Article 4 paragraph 1 of the Bilateral treaty,
- **Hungary:** Ministries of Justice of the state members of the State Union, Attorney general of Republic of Hungary (Article 2 of the bilateral treaty).
- **Romania:** Ministries of Justice of the state members of the State Union, Ministry of justice of Romania in criminal matters, and Attorney general of Romania for preliminary criminal investigation (Article 4 of the bilateral treaty)
- **Serbia:** Ministries of Justice (Article 4 of the bilateral treaty)
- **Bosnia and Herzegovina:** Ministries of Justice (Article 4 of the bilateral treaty)
- **“The former Yugoslav Republic of Macedonia”:** Ministries of Justice (Article 3 of the bilateral treaty)

##### *Through diplomatic channels*

In case there is no international agreement or reciprocity, the Ministry of Justice receives and sends requests for mutual legal assistance through diplomatic channels.

**Through direct contacts**

Exceptionally, and when it is set out in an international agreement, domestic authorities may communicate directly with foreign judicial authorities, provided that they send a copy of the request for mutual assistance to the Ministry of Justice: see Article 4, paragraph 4 of the Law on mutual legal assistance in criminal matters.

- **Croatia:** INTERPOL, Article 4 par 3 of the bilateral treaty
- **Serbia:** INTERPOL, Article 4 of the bilateral treaty
- **“The former Yugoslav Republic of Macedonia”:** INTERPOL, Article 4, paragraph 3 of the bilateral treaty
- **Bosnia and Herzegovina:** INTERPOL, Article 4, paragraph 3 of the bilateral treaty

iii. **Form and content of requests for mutual legal assistance**

**Information to be included in a request**

Article 7 of the Law on mutual legal assistance in criminal matters prescribes the form and the content of the letter rogatory:

Unless otherwise has been provided for by an international agreement or this Law, signed and certified letter rogatory for international legal assistance shall contain:

- 1) the name and the seat of the authority making the request;
- 2) the name of the requested authority, and if its precise name is unknown, an indication that the letter rogatory is being sent to the competent judicial authority, and the name of the country;
- 3) legal basis for the provision of international legal assistance;
- 4) the form of the international legal assistance requested and the reason for the letter rogatory;
- 5) legal qualification of the criminal offence committed and the summary of the facts, except if the letter rogatory refers to the service of court writs (applications, documents and the like);
- 6) nationality and other personal details of the person regarding which the international legal assistance is requested and his status in the proceedings;
- 7) in case of service of court writs, their type.

Bilateral treaties provide for the form and content of the request for extradition:

- **Bulgaria** : Articles 54, 55 and Article 9 in connection with Article 61, the request must contain the subject of the letter rogatory, the names of the parties in the procedure; their profession and their domicile or residence, the facts (which must be clarified through the wanted proofs and in case of need), the questions that the interrogated person must be asked;
- **Croatia** : Article 3 of the bilateral treaty, same as the above mentioned
- **Hungary** : Articles 13 and 14 in connection with Article 79, same as the above mentioned
- **Romania** : Articles 8 and 9 in connection with Article 61, same as the above mentioned
- **Serbia:** Article 6 of the bilateral treaty, the provision as above
- **Bosnia and Herzegovina:** Article 6 of the bilateral treaty, the provision as above
- **“The former Yugoslav Republic of Macedonia”:** Article 4 of the bilateral treaty, the provision as above

**List of measures which may be provided (to be completed)**

Measures possible include:	Legal basis/information to be included
Hearings (including interrogation and confrontation, identification of persons and objects)	<p><u>Hearing of accused person and witnesses:</u> Yes – Article 42 of the Law on mutual legal assistance in criminal matters</p> <ul style="list-style-type: none"> <li>- Article 23 of the bilateral treaty with Croatia</li> <li>- Article 55 of the bilateral treaty with Bulgaria</li> <li>- Article 75 of the bilateral treaty with Hungary</li> <li>- Article 59 of the bilateral treaty with Romania</li> <li>- Article 32 of the bilateral treaty with B&amp;H</li> <li>- Article 33 of the bilateral treaty with Serbia</li> <li>- Article 29 of the bilateral treaty with “The former Yugoslav Republic of Macedonia”</li> </ul> <p><u>Expertise and interrogation of expert witness:</u> Yes – Article 42 of the Law on international legal assistance in criminal matters</p> <ul style="list-style-type: none"> <li>- Article 23 of the bilateral treaty with Croatia</li> </ul>

	<ul style="list-style-type: none"> <li>- Article 55 of the bilateral treaty with Bulgaria</li> <li>- Article 75 of the bilateral treaty with Hungary</li> <li>- Article 59 of the bilateral treaty with Romania</li> <li>- Article 32 of the bilateral treaty with B&amp;H</li> <li>- Article 33 of the bilateral treaty with Serbia</li> <li>- Article 29 of the bilateral treaty with "The former Yugoslav Republic of Macedonia"</li> </ul>
Transfer of persons deprived of liberty for the purpose of hearing	<p>Yes</p> <ul style="list-style-type: none"> <li>- Article 24 paragraph 1 of the bilateral treaty with Croatia</li> <li>- Article 59 of the bilateral treaty with Bulgaria</li> <li>- Article 77 of the bilateral treaty with Hungary</li> <li>- Article 62/2 of the bilateral treaty with Romania</li> <li>- Article 34 of the bilateral treaty with B&amp;H</li> <li>- Article 35 of the bilateral treaty with Serbia</li> <li>- Article 30 of the bilateral treaty with "The former Yugoslav Republic of Macedonia"</li> </ul>
Search and seizure of evidence	<p>Yes – Article 42 of the Law on international legal assistance in criminal matters</p> <ul style="list-style-type: none"> <li>- Article 23 of the bilateral treaty with Croatia</li> <li>- Article 55 of the bilateral treaty with Bulgaria</li> <li>- Article 75 of the bilateral treaty with Hungary</li> <li>- Article 59 of the bilateral treaty with Romania</li> <li>- Article 32 of the bilateral treaty with B&amp;H</li> <li>- Article 33 of the bilateral treaty with Serbia</li> <li>- Article 29 of the bilateral treaty with "The former Yugoslav Republic of Macedonia"</li> </ul>
Search, identification, freezing, seizure and confiscation of instrumentalities and proceeds of crime	<p>Yes – Article 42 of the Law on international legal assistance in criminal matters</p> <ul style="list-style-type: none"> <li>- Article 23 of the bilateral treaty with Croatia</li> <li>- Article 55 of the bilateral treaty with Bulgaria</li> <li>- Article 75, 75a, 75b of the bilateral treaty with Hungary</li> <li>- Article 59 of the bilateral treaty with Romania</li> <li>- Article 32 of the bilateral treaty with B&amp;H</li> <li>- Article 33 of the bilateral treaty with Serbia</li> <li>- Article 29 of the bilateral treaty with "The former Yugoslav Republic of Macedonia"</li> </ul>
Use of special investigative means	<p>Yes</p> <ul style="list-style-type: none"> <li>- Article 33 of the bilateral treaty with Serbia</li> </ul>
- Interception of telecommunications	
- Bugging	
- Observation	
- Order to produce specific documents	
- Undercover operation	
- Controlled delivery	
- Feigned giving/accepting	

**Specific requirements: dual criminality/Reciprocity**

Both are required.

**Language of the request/translation**

The request for mutual legal assistance of domestic or foreign judicial authorities is delivered together with a translation in the language of the requested state or in one of the official languages of the Council of Europe,

if so agreed by the requested state. Replies to the request of foreign judicial authorities do not need to be translated.

**iv. Grounds for refusal of an assistance request**

According to the appropriate provisions of the bilateral treaties legal assistance may be refused:

- if the request concerns an offence which the requested party considers as a political offence, a fiscal offence or military offence,
- if the requested party considers that execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of its country
- the criminal act is not incriminated as an offence according to the laws of Montenegro

**v. Issuing and executing a request**

***Competencies of the national authorities***

Outgoing requests:

The request issued by a court is sent to the Ministry of Justice of the Republic of Montenegro, which examines the materials concerning their compliance with international treaties or bilateral agreements and the forwards them to the requested foreign authorities through Federal Ministry of Foreign Affairs;

Incoming request:

The request of the foreign court is sent to the Federal Ministry of external affairs, which forwards it to the competent local court in Montenegro through the Ministry of Justice of the Republic of Montenegro

***Procedure***

Criminal procedure applies as provided by the Criminal Procedure Code of Montenegro (Article 54 of the Law on mutual legal assistance in criminal matters).

**vi. Costs of assistance**

Costs of witness examination and temporary transfer of the detained person are borne by the requesting state, while any other cost is borne by the domestic authority which undertakes the measure concerned, on the condition of reciprocity.

**(13) REQUESTS FOR SERVING OF SUMMONSES, JUDGMENTS AND OTHER PROCEDURAL DOCUMENTS**

According to bilateral treaties with:

- **Bulgaria:** Article 55
- **Croatia:** Article 23
- **Hungary:** Article 75
- **Romania:** Article 59
- **Bosnia and Herzegovina:** Article 32
- **Serbia:** Article 33
- **“The former Yugoslav Republic of Macedonia”:** Article 29

**(14) EXCHANGE OF CRIMINAL RECORDS**

- **Bulgaria:** according to Article 62 of the bilateral treaty
- **Croatia:** according to Article 26 of the bilateral treaty
- **Hungary:** according to Article 80 of the bilateral treaty
- **Romania:** according to Article 66 of the bilateral treaty
- **Bosnia and Herzegovina:** Article 37
- **Serbia:** Article 39
- **“The former Yugoslav Republic of Macedonia”:** Article 31

## 2.5.4 Transfer of sentenced persons & validity of foreign judgments

### (15) TRANSFER OF SENTENCED PERSONS

#### i. Legal basis

- The European Convention on the Transfer of Sentenced Persons (ETS 112) and its additional protocol (ETS 167).

Bilateral treaties:

- **Bosnia and Herzegovina:** Treaty between Serbia and Montenegro and Bosnia and Herzegovina on mutual enforcement of decisions in criminal matters (24.02.2005 entered into force on 8.07.2005)
- **Serbia:** Treaty between Montenegro and the Republic of Serbia on mutual enforcement of judicial decisions in criminal matters (29.05.2009 entered into force on 29.05.2009)

Domestic legislation:

Law on mutual assistance in criminal matters, Article 41, Paragraph 2:

If a foreign national convicted in Montenegro or if a competent authority authorised by an international agreement submits a request to the competent Montenegrin court for the sentenced person to serve the sentence in his country, the court shall proceed pursuant to the international agreement.

#### ii. Conditions

According to Article 3 of ETS 112:

- a) if the person is a national of the administering state,
- b) if the judgment is final,
- c) if, at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or if the sentence is indeterminate,
- d) if the transfer is consented to by the sentenced person or, where in view of his age or his physical or mental condition one of the two states considers it necessary, by the sentenced person's legal representative,
- e) if the act of omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory, and
- f) if the sentencing and administering States agree to transfer.

According to Article 2 of the bilateral treaty with Serbia:

- 1) if the sentenced person is a national of the administering state or has the permanent residence in it;
- 2) if the judgment is final and enforceable;
- 3) if the offence on which the judgment is based constitutes a criminal offence according to the law of both contracting states;
- 4) if the offence on which the judgment is based does not constitute, in an opinion of the administering state, a political or military offence;
- 5) if the enforcement or supervision do not run contrary to the fundamental principles of the legal order of the administering state;
- 6) if the enforcement or supervision do not run contrary to other obligations of the administering state arising out of multilateral conventions;
- 7) if no criminal proceedings is pending against the sentenced person in the administering state, for the criminal offence for which the transfer of the enforcement or supervision is requested;
- 8) if the sentenced person has already not been sentenced in the final and binding decision by the administering state for the same criminal offence, or if he has not been acquitted from the accusation;
- 9) if the enforcement of the criminal sanction is not subject to the statute of limitation according to the law of either contracting state;
- 10) if the court judgment has not been taken in absence of the sentenced person;
- 11) if the sentenced person is not entitled to asylum in the sentencing state.

See also Article 22 of the bilateral treaty with Serbia.

According to Article 2 of the bilateral treaty with Bosnia and Herzegovina:

- 1) if the sentenced person is a national of the administering state or has the permanent residence in it;
- 2) if the judgment is final;
- 3) if the transfer is consented by the sentenced;
- 4) if the criminal offence on which the final judgment is based constitutes a criminal offence according to the law of both contracting states;
- 5) if the contracting states agree to the transfer of supervision or enforcement;



- 6) if, at the time of submission of the request, the sentenced person still has at least six months of the sentence or another measure requiring deprivation of liberty, including the conditional criminal sanction, to serve.

**iii. Procedures**

See Articles 5 to 15 of the European Convention on the Transfer of Sentenced Persons (ETS 112).

See Article 6 of the bilateral treaty with Bosnia and Herzegovina and Article 5 of the Treaty with Serbia

**(16) VALIDITY OF FOREIGN JUDGMENTS**

Law on mutual legal assistance in criminal matters, Article 38, Paragraph 1:

Competent Montenegrin court shall enforce final and legally binding criminal verdict of a foreign court if this has been prescribed under an international agreement or if there is reciprocity and if it imposes the criminal sanction in accordance with the domestic law.

Bilateral treaties:

- **Serbia:** Chapter III, Art. 16 to 26
- **Bosnia and Herzegovina:** Chapter III, Art. 13 to 19

### 2.5.5 Contact details of competent authorities and list of contact points

Ministry of Justice of the Republic of Montenegro	Department for international legal aid Vuka Karadzica No.3 Podgorica Tel: +382 20 407 510 Fax: +382 20 407 515	All forms of mutual legal assistance  Languages spoken: Montenegrin and English
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## 2.6 SERBIA

Until 1991, the Socialist Federal Republic of Yugoslavia (SRFY) had one single Criminal Procedure Act (1977) applicable to the whole territory of the Federation. A Federal Criminal Act was also enacted in 1976 regulating the general principles and limited number of offences, while each Republic of the Federation held jurisdiction over all other offences, which was reflected in the adoption of 6 criminal acts all drafted between 1976 and 1986.

When the Federation broke apart, initially the new States retained the federal codes, but subsequently each of them, with the exception of the Federal Republic of Yugoslavia, drafted and enacted new codes between 1994 and 1998. The former Federal Republic of Yugoslavia was the only entity of the former Socialist Federal Republic of Yugoslavia, which retained the federal codes.

In 2001, the Federal Assembly of the then Federal Republic of Yugoslavia passed a new Criminal Procedure Code superseding the Act of 1977. However, this Code did not apply to Montenegro as one year prior to this, a parliamentary resolution adopted by the Parliament of Montenegro denied legal effect to any texts enacted by the Federal Assembly. Therefore, the new Criminal Procedure Code – which was amended in 2002 – was applicable to Serbia only while the 1977 Criminal Procedure Act was still enforceable with respect to Montenegro.

As far as the 1976 Criminal Code is concerned, its general principles are still in force while each Republic of the former Federal Republic of Yugoslavia has enacted a criminal code of its own (in 1994 for Serbia, in 1993 for Montenegro) regulating special offences, which complemented and consolidated that passed in the seventies. These codes hold primary jurisdiction.

With the entry into force of the Constitutional Charter, the power to legislate on criminal policy and procedure has been transferred to each Member State.

The situation can thus be summarized as follows:

**Union level:** no criminal and criminal procedure code.

### **Republic of Serbia:**

- a) Criminal Procedure Code (Official Gazette of FRY, 70/2001 and 68/2002 and Official Gazette of the Republic of Serbia, 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007 and 20/2009 – other law, and 72/2009). Note: The provisions of Chapter XXIX (Proceedings against juvenile) of the Code ceased to be in force on 01.01.2006, i.e. upon the entry into force of the Law on Juvenile Perpetrators of Criminal Offences and Criminal Law Protection of Minors (Official Gazette of the Republic of Serbia, 85/2005); the provisions of Chapter XXXII (Proceedings on mutual assistance and enforcement of international treaties in criminal matters, Art. 530-538) and Chapter XXXIII (Proceedings for extradition of defendants and sentenced persons, Art. 539-555) of the Code ceased to be in force upon the entry into force of the Law on mutual assistance in criminal matters (Official Gazette of the Republic of Serbia, 20/2009), or 27. 03. 2009. This Code ceased to be in force upon the start of the application of the Criminal Procedure Code (Official Gazette of the Republic of Serbia, 46/2006, 49/2007 and 122/2008), or on 31.10.2010.
- b) Law on mutual assistance in criminal matters (Official Gazette of the Republic of Serbia, 20/2009), which entered into force and started to apply on 27. 03. 2009.

Under the Article 18 of the Law on the implementation of the Constitutional Charter of the State Union of Serbia and Montenegro, the Ministry for National and Ethnic Communities took over the duties of the Federal Ministry of Justice in the part related to the monitoring and exercise of the freedoms and rights of man and citizen guaranteed by the Constitutional Charter, international treaties and laws, and extradition.

## 2.6.1 Extradition procedures

### (1) LEGAL BASIS

#### i. Multilateral treaties and conventions

- See the European Convention on Extradition (ETS 024) and its two Additional Protocols (ETS 086 and ETS 098).
- United Nations Convention against transnational organised crime and the Protocol to prevent, suppress and punish trafficking in persons, especially women and children

#### ii. Bilateral treaties<sup>3</sup>

- **Albania:** Treaty between the Kingdom of Slovenians, Croats and Serbs and the National Republic of Albania on extradition of convicted persons, Articles 1 to 13 (22.06.1926 entered into force on 21.05.1929)
- **Algeria:** Treaty on legal assistance in civil and criminal matters between the Socialist Federal Republic of Yugoslavia and the Democratic National Republic of Algeria of 31.03.1982, Articles 31 to 50 (Official Gazette of SFRY – International treaties, 2/1983, entered into force on 29.12.1983).
- **Austria:** Treaty on extradition between the Socialist Federal Republic of Yugoslavia and the Republic of Austria of 01.02.1982, (Official Gazette of SFRY – International treaties, 2/1983, entered into force on 01.01.1984).
- **Belgium:** Convention on extradition and legal assistance in criminal matters between the Socialist Federal Republic of Yugoslavia and the Kingdom of Belgium of 04.06.1971, Articles 1-23 (Official Gazette of SFRY – Appendix, 9/1973, entered into force on 01.11.1972).
- **Bulgaria :** Treaty between the Federal National Republic of Yugoslavia and the National Republic of Bulgaria on mutual legal assistance, Articles 66 to 86 (23.03.1956 entered into force 27.01.1957)
- **Czech Republic:** Treaty between the Socialist Federal Republic of Yugoslavia and the Czechoslovakian Socialist Republic on regulating legal relations in civil, family and criminal matters of 20.01.1964, Articles 63 to 80 (Official Gazette of SFRY – Appendix, 13/1964, entered into force on 02.08.1964).
- **Montenegro:** Treaty between the Republic of Serbia and Montenegro on extradition of 29.05.2009.
- **France:** Convention on extradition between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the French Republic of 23.09.1970 (Official Gazette of SFRY – Appendix, 43/1971, entered into force on 01.08.1971).
- **Greece:** Convention between the Federal National Republic of Yugoslavia and the Kingdom of Greece on mutual legal relations of 18.06.1959, Articles 44 to 65 (Official Gazette of SFRY – Appendix, 7/1960, entered into force on 31.03.1960).
- **The Netherlands:** Treaty on extradition of convicts between Serbia and the Netherlands of 28.02.(11.03.)1896 (Serb Journal, 275/1896, entered into force in 1896).
- **Hungary:** Treaty between the Socialist Federal Republic of Yugoslavia and Hungary on mutual legal assistance, Chapter II, Articles 84-104 (07.03.1968 entered into force on 18.01.1969 .); Treaty on amendments to the Treaty between the Socialist Federal Republic of Yugoslavia and the National Republic of Hungary on mutual legal exchange of 25.04.1986, Articles 27 to 28 (amendments to Articles 85 and 93 of the Treaty of 1968, entered into force on 15.12.1987)
- **Iraq:** Treaty between the Socialist Federal Republic of Yugoslavia and the Republic of Iraq on legal and judicial co-operation of 23.05.1986, Articles 20 to 35 (Official Gazette – International treaties, 1/1987, entered into force 1987).
- **Italy:** Convention between the Kingdom of Serbs, Croats and Slovenians and Italy on extradition of convicts of 06.04.1922, (Official Gazette, 42/1931, entered into force in 1931).
- **“The former Yugoslav Republic of Macedonia”:** Treaty between Serbia and Montenegro and the [...] Republic of Macedonia on legal assistance in civil and criminal matters, Articles 37 to 50 (Official Gazette of Serbia and Montenegro – International treaties, 22/2004, entered into force on 09.03.2005).
- **Mongolia:** Treaty between the Socialist Federal Republic of Yugoslavia and Mongolian National Republic on legal assistance in civil, family and criminal matters of 08.06.1981, Articles 66 to 82 (Official Gazette of FRY – International treaties, 7/1982, entered into force on 24. 03.1983).
- **Germany:** Treaty on extradition between the Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany of 26.11.1970 (Official Gazette of FRY – Appendix 17/1976, entered into force on 14.11.1975).
- **Poland:** Treaty between the Federal National Republic of Yugoslavia and the National Republic of Poland on legal exchange in civil and criminal matters of 06.02.1960, Articles 73 – 91 (Official Gazette of FNRY – Appendix, 5/1963, entered on 05.06.1963).

<sup>3</sup> With the former Yugoslav republics, there are only draft bilateral agreements which have not yet entered into force.

- **Romania:** Treaty between the Socialist Federal Republic of Yugoslavia and the Republic of Romania on mutual legal assistance, Chapter II, Articles 68 to 83 (18.10.1960 entered into force on 01.10.1961)
- **Russian Federation:** Treaty between the Federal National Republic of Yugoslavia and the Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters of 24.02.1962, Articles 58 to 69 (Official Gazette of FNRJ – Appendix, 5/1963, entered into force on 26.05.1963).
- **United States of America:** Convention on extradition of convicts concluded between the Kingdom of Serbia and the United States of America of 12/25.10.1901, (Serb Journal, 33/1902), entered into force in 1901)
- **Slovakia:** Treaty between the Socialist Federal Republic of Yugoslavia and the Czechoslovakian Socialist Republic on regulating legal relations in civil, family and criminal matters of 20.01.1964, Articles 63 to 80 (Official Gazette of SFRY – Appendix, 13/1964, entered into force on 02.08.1964).
- **Spain:** Treaty between the Socialist Federal Republic of Yugoslavia and Spain on legal assistance in criminal matters and extradition of 08.07.1980, Articles 21 to 48 (Official Gazette of SFRY – International treaties, 3/1981, entered into force in 1982).
- **Turkey:** Convention on extradition between the Socialist Federal Republic of Yugoslavia and the Republic of Turkey of 17.11.1973 (Official Gazette of SFRY – Appendix, 47/1975, entered into force in 1975)
- **Great Britain:** Treaty on mutual extradition of convicts between Serbia and Great Britain of 06.12.1900, (Serb Journal, 35/1901, entered into force in 1901).

### iii. National legislation

- Article 16, paragraph 2 of the Constitution of the Republic of Serbia provides that generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system of the Republic of Serbia and applied directly. The same provision specifies that ratified international treaties must be in accordance with the Constitution.
- Law on mutual assistance in criminal matters, Articles 13 to 40.

## (2) DETENTION OF THE REQUESTED PERSON

### i. Provisional arrest for extradition (conditions and channel of communication)

#### *Upon request*

For countries parties to ETS 024: it is possible according to its article 16 via INTERPOL in principle.  
For all other countries: provisional arrest of a person requested for extradition is possible on the basis of provisions of Articles 24 to 26 of the Law on mutual assistance in criminal matters, on the condition that all requirements referred to in Article 24 are fulfilled. The request for provisional arrest is submitted to the national judicial authority or the police directly, through the Ministry of Justice, or through INTERPOL. Subject to reciprocity, an issued international arrest warrant shall be deemed a request.

#### *Without request*

- **Albania:** it is possible according to Article 8 paragraph 2 of the bilateral treaty
- **Bulgaria:** it is possible according to Article 75 paragraph 5 of the bilateral treaty. The competent courts or organs of the requesting country could order the provisional arrest, even without request, provided by Article 93 paragraph 1 of the bilateral treaty, of the person which is on their territory, if they find out that this person committed a criminal offence on the territory of the other state party for which offence extradition is allowed, and then these organs are obliged to inform the country whose arrested person is the citizen.
- **Czech Republic:** It is possible according to Article 68, paragraph 2 of the bilateral treaty, if it is known that the person concerned committed a criminal offence on the territory of the other state party for which offence extradition is allowed on the basis of this treaty.
- **Greece:** It is possible according to Article 54, paragraph 5 of the bilateral treaty, same provision as the one in the bilateral treaty with Bulgaria.
- **Hungary:** it is possible according to Article 93 paragraph 4 of the bilateral treaty, same provision as the one in the bilateral treaty with Bulgaria.
- **Mongolia:** It is possible according to Article 71, paragraph 2 of the bilateral treaty, same provision as the one in the bilateral treaty with Bulgaria.
- **Germany:** It is possible according to Article 19 of the bilateral treaty, same provision as the one in the bilateral treaty with Bulgaria.
- **Poland:** It is possible according to Article 83, paragraph 4 of the bilateral treaty, same provision as the one in the bilateral treaty with Bulgaria.
- **Romania:** it is possible according to Article 73 paragraph 2 of the bilateral treaty, if there is enough evidence that the requested person committed an offence for which extradition is requested. The same provision as the one in the bilateral treaty with Bulgaria.

- **Spain:** It is possible according to Article 38 of the bilateral treaty, same provision as the one in the bilateral treaty with Bulgaria.

ii. **Arrest for extradition (conditions and channel of communication)**

**Obligatory**

The Law on mutual assistance in criminal matters does not provide for cases of obligatory arrest for extradition. The investigative judge may order detention (Article 22) for the person sought for extradition if such circumstances exist which indicate that the person sought for extradition will hide or escape or hinder the collection of evidence. Detention may not last longer than a year from the day when the person sought for extradition was detained.

After formal request for extradition from:

- **Albania:** according to Article 8 paragraph 2 of the bilateral treaty. The Government of the requested country will order the arrest of the requested person immediately after having received the extradition request with the additional documents.
- **Algeria:** Article 41 of the bilateral treaty – obligatory detention if the requirements for extradition have been met.
- **Czech Republic:** Article 67 of the bilateral treaty. Upon receipt of the request for extradition, the requested state will take all measures, without delay, to detain the person sought for extradition.
- **Iraq:** Article 27 of the bilateral treaty.
- **Romania:** according to Article 74 of the bilateral treaty, the requested country will take all necessary measures for finding and arresting the requested person if the conditions for extradition resulted from the extradition request and the additional documents.
- **Russian Federation:** Article 62 of the bilateral treaty, same provision as the one in the bilateral treaty with Romania.

**Non-obligatory**

- **Austria:** Article 23 of the bilateral treaty.
- **Belgium:** Article 13 of the bilateral treaty.
- **Bulgaria:** according to Article 74 of the bilateral treaty, if all the conditions for extradition are satisfied, the requested country could order the arrest of the requested person.
- **France:** Article 12 of the bilateral treaty
- **Greece:** Article 53 of the bilateral treaty
- **Hungary:** according to Article 92 paragraph 1 of the bilateral treaty, if all conditions for extradition are satisfied, the requested country can order the arrest of the requested person if this is necessary needed.
- **Mongolia:** Article 70 of the bilateral treaty
- **Germany:** Article 20 of the bilateral treaty, detention will be ordered in particular if there is a fear that the person concerned will avoid the extradition procedure or enforcement for the extradition decision.
- **Poland:** Article 82 of the bilateral treaty.

**(3) CHANNELS OF COMMUNICATION FOR EXTRADITION REQUESTS**

According to article 5 of ETS 098 in connection with article 12 of ETS 024, the request for extradition is sent through the ministries of justice. The diplomatic channel is not excluded.

The Ministry of Justice (in Belgrade, 11000, 22-26 Nemanjina St.) is responsible for receiving and sending requests for extradition.

Article 6 of the Law on international legal assistance in criminal matters provides that letters rogatory and other submissions of the national judicial authority deliver to the foreign authority through the Ministry of Justice. The same procedure is provided for letters rogatory and other submissions of the foreign authority delivered to the national judicial authorities.

Subject to reciprocity, the delivery may also be made directly to the foreign/judicial authority or through INTERPOL in urgent cases.

**(4) FORM AND CONTENT OF REQUESTS FOR EXTRADITION**

For parties to ETS 024: see article 12.

In the case that between the requesting and requested states there is no international treaty regulating this issue, the provisions of Article 15 of the Law on mutual assistance in criminal matters will apply, providing that the letter rogatory is accompanied by the following supporting documents:

- Means to establish proper identity of an accused or a convicted person (an accurate description, a photograph, finger prints, etc.);

- Certificate or other data on the citizenship of an accused or a convicted person;
- Decision on the instigation of criminal proceedings, the indictment, the decision on detention or the judgment;
- Evidence presented on the existence of the grounded suspicion.

## (5) CONDITIONS FOR GRANTING EXTRADITION

Article 7 of the Law on mutual assistance in criminal matters provides for general preconditions for mutual assistance, as follows:

- the criminal offence, in respect of which legal assistance is requested, constitutes the offence under the legislation of the Republic of Serbia;
- the proceedings on the same offence have not been fully completed before the national court, that is, a criminal sanction has not been fully executed;
- the criminal prosecution, that is, the execution of a criminal sanction is not excluded due to the state of limitations, amnesty or an ordinary pardon;
- the request for legal assistance does not refer to a political offence or an offence relating to a political offence, that is, a criminal offence comprising solely violation of military duties;
- the execution of requests for mutual assistance would not infringe sovereignty, security, public order or other interests of essential significance for the Republic of Serbia.

Article 16 of the Law on international assistance in criminal matters provides for special preconditions, as follows:

- the person, in respect of whom extradition is requested, is not a national of the Republic of Serbia;
- the offence, in respect of which extradition is requested, was not committed in the territory of the Republic of Serbia, and not committed against it or against its citizen;
- the same person is not prosecuted in the Republic of Serbia for the offence in respect of which extradition is requested;
- in accordance with the national legislation conditions exist for reopening the criminal case for the criminal offence in respect of which extradition is requested;
- proper identity of the person in respect of whom extradition is requested is established;
- there is sufficient evidence to support the reasonable doubt, that is, an enforceable court decision is in place demonstrating that the person in respect of whom extradition is requested has committed the offence in respect of which extradition is requested;
- the requesting party guarantees that in case of conviction *in absentia* the proceeding will be repeated in presence of the extradited person;
- the requesting party guarantees that the capital offence provided for the criminal offence in respect of which extradition is requested will not be imposed, that is, executed.

## (6) GROUNDS FOR REFUSAL OF AN EXTRADITION REQUEST

### i. Mandatory grounds

If some of the preconditions referred to in Articles 7 and 16 of the Law on mutual assistance in criminal matters are not met.

Bilateral treaties:

- **Albania:** Article 3, 4, 6 of the bilateral treaty – own national, political offence, military offence, lapse of time;
- **Algeria:** Article 33 – 34 – own nationals, asylum, stateless person with the permanent residence in the territory of the requested state, criminal offences that are prosecuted by individual, lapse of time or amnesty, person convicted by a final judgment or the criminal proceedings for the same offence completed by final judgment before the court of the requested state.
- **Austria:** Articles 3 to 14 – own national, asylum, extradition contrary to the obligations of the requested state required by multilateral treaties, political, military and fiscal offences, person convicted by final judgment or criminal proceedings for the same offence completed by final judgment before the court of the requested state, lapse of time, amnesty, military offences, criminal offences that are prosecuted by individual, political offences, customs, tax and foreign-exchange offences, death penalty.
- **Belgium:** Article 3 to 8 – own national, place of commission in the requested state, final judgment, convicted person or criminal proceedings for the same offence completed by final judgment before the court of the requested state, lapse of time, amnesty, military offence, criminal offences that are prosecuted by individual, political offence, customs offence, tax and foreign-exchange offence, death penalty.
- **Bulgaria :** Article 70, 71 paragraph 1 and Article 72 – own national, final judgment, lapse of time, political offence, military offence;

- **Czech Republic:** Article 64 – own national, place of commission in the requested state, lapse of time, extradition not allowed by law of either contracting state, final judgment or final decision terminating proceedings.
- **France:** Articles 3 to 8 – as in the bilateral treaty with Belgium.
- **Greece:** Article 49 to 51 – own national, place of commission in the requested state, lapse of time, criminal offences that are prosecuted by individual, political, military, financial and press offences.
- **Hungary:** Articles 88, 89, 90 – own national, final judgment, political offence, military offence;
- **Iraq:** Article 21 to 22 – own national, place of commission in the requested state, lapse of time, final judgment, death penalty.
- **“The former Yugoslav Republic of Macedonia”:** Article 39 – own national, extradition not allowed by the constitution and law of the requested state, place of commission in the requested state, political offence, military offence, lapse of time, amnesty, criminal proceedings pending before the court of the requested state for the same offence, final judgment or proceedings suspended for the same offence.
- **Mongolia:** Article 67 – own national, place of commission in the requested state, lapse of time, amnesty, final judgment or proceedings suspended for the same offence, criminal offences that are prosecuted by individual, extradition not allowed by law of either contracting state.
- **Germany:** Article 3 to 14 – political offence, military offence, fiscal offence, contrary to the constitution of the requested state, *ne bis in idem*, lapse of time, place of commission in the requested state, amnesty, death penalty, proceedings pending before extraordinary courts.
- **Poland:** Articles 76 to 77 – place of commission in the requested state, own nationals, final judgment or proceedings suspended for the same offence, lapse of time, criminal offences that are prosecuted by individual.
- **Romania:** Article 69 – political offence, military offence, if offence is committed on territory of the requested country, lapse of time, final sentence, if is needed private suit.
- **Russian Federation:** Article 59 – own national, place of commission in the requested state, lapse of time, extradition not allowed by law of the contracting state, final judgment or proceedings suspended for the same offence, criminal offences that are prosecuted by individual.
- **Slovakia:** same as with the Czech Republic
- **Spain:** Article 23 to 34 – same as with Germany.

## ii. Optional grounds

According to Article 33 of the Law on mutual assistance in criminal matters, the Minister of Justice may refuse to grant extradition if the guarantees of a fair trial were not exercised in the trial conducted in absence of the person requested for extradition.

## (7) ISSUING AND EXECUTING AN EXTRADITION REQUEST

### i. Competencies of the national authorities involved in the procedure

#### **Outgoing requests**

Letters rogatory and other annexed documents of the national judicial authority are transmitted to foreign authorities through the Ministry of Justice (Article 6 of the Law on mutual assistance in criminal matters).

#### **Incoming requests**

The letter rogatory for extradition is forwarded by the Ministry of Justice to the court in the territory of which the person requested for extradition resides or is found (Article 18 of the Law on mutual assistance in criminal matters).

Article 4 the Law on mutual assistance in criminal matters provides that the authorities competent to exercise mutual legal assistance include national courts and public prosecutor's offices and certain actions in the mutual assistance proceedings are performed by the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Internal Affairs.

## ii. Procedure

#### **Rule of speciality**

Article 32 of the Law on mutual assistance in criminal matters: In the decision granting extradition, the Minister of Justice may impose conditions on extradition within the meaning of Article 14, paragraph 1 of the Law on mutual assistance in criminal matters (except if the person requested for extradition has expressly waived these guarantees).

Article 14 provides that, if the extradition is granted:



- a) the extradited person may not be prosecuted, subjected to the execution of a criminal sanction or extradited to a third party for the criminal offence committed before the extradition took place, the offence not being the subject of extradition,
- b) if the extradited person did not leave the territory of the state which he/she was extradited to, even though s/he had an opportunity to do so, within 45 days of the day s/he was paroled or the day when the criminal sanction was fully served or if s/he returned to the territory concerned.

Article 32, sub-paragraph 2) of the Law on mutual assistance in criminal matters provides that the Minister of Justice may impose other conditions for extradition.

Bilateral treaties:

- **Albania:** Article 7 of the bilateral treaty – the extradited person cannot be tried only for the offence for which he/she was requested, as well as for offences committed before the extradition request, which are in connection with this offence, unless he wants to be tried for the other offences, and in that case the country which surrenders this person should be informed;
- **Algeria:** Article 36;
- **Austria:** Article 17;
- **Belgium:** Article 16.
- **Bulgaria:** Article 80 of the bilateral treaty – the extradited person cannot be a subject of the criminal proceeding or execution of the criminal sentence for the offence committed before extradition, if that offence was not an assumption for extradition, and this person also cannot be surrendered to a third country for trial or execution of the criminal sentence without the permission of the country which extradited this person.
- **Czech Republic:** Article 73;
- **France:** Article 15 to 16;
- **Greece:** Article 57;
- **Iraq:** Article 32;
- **Hungary** (Article 98)
- **“The former Yugoslav Republic of Macedonia”:** Article 40;
- **Mongolia:** Article 77;
- **Germany:** Article 25;
- **Poland:** Article 86;
- **Romania** (Article 77): same provision exists in the bilateral treaty.
- **Russian Federation:** Article 68;
- **Slovakia:** Article 73;
- **Spain:** Article 42.

### ***Simplified extradition procedure***

Article 30 of the Law on mutual assistance in criminal matters provides the possibility of simplified extradition procedure on the condition that the person requested for extradition consents to the simplified extradition procedure.

- The investigative judge is obliged to warn the person requested for extradition of the consequences of the statement of consent to the simplified procedure.
- After the statement has been given before the investigative judge, the records thereof are forwarded to the Pre-trial Chamber (Article 29) for deciding on the fulfilment of the preconditions for extradition.
- The decision on the fulfilment of the preconditions for extradition is submitted to the Minister of Justice for deciding whether the extradition will be allowed (Articles 31 to 35).

### ***Surrender of the person***

Article 31 of the Law on mutual assistance in criminal matters:

- (1) The decision granting the extradition shall be delivered to competent court, the person requested for extradition, the Ministry of Internal Affairs and the requesting state.

Article 37 of the Law on mutual assistance in criminal matters:

- (2) The Ministry of Internal Affairs shall enforce the decision granting the extradition.
- (3) The Ministry of Internal Affairs shall agree with the competent authority of the requesting state the place, the time and the manner of surrender of the defendant or the convicted. The surrender shall be effected within 30 days of the day of the passing the decision.

All bilateral treaties include provisions on surrender of the defendant or the convicted person.

### ***Postponed or conditional surrender***

Article 34 of the Law on mutual assistance in criminal matters provides for the possibility of postponing the enforcement of the decision on extradition:

- until the criminal proceedings conducted against the person sought for extradition for some other offence before the national court are finally completed;

- until the person, in respect of whom extradition was granted, has served the prison sentence or the sentence constituting deprivation of liberty.

Article 35 of the Law on mutual assistance in criminal matters provides for the possibility of the case referred to in Article 34 – provisional extradition of the person requested:

- should it be without prejudice to the criminal proceeding conducted before the national court;
- should the requesting state provide guarantees that the provisionally extradited person will be detained and that he/she will be transferred back to the Republic of Serbia upon request of the Minister of Justice.

### ***Extradition procedures in Serbia***

Articles 18 to 37 of the Law on mutual assistance in criminal matters:

- Letters rogatory are sent to the Ministry of Justice.
- The Ministry of Justice forwards the letter rogatory to the court in the territory of which the person requested for extradition resides or is found.
- The investigative judge will hear the person requested for extradition and may order detention.
- The investigative judge takes measures to establish whether there are preconditions for extradition and submits the files to the Pre-trial Chamber.
- The Pre-trial Chamber issues a decision refusing the extradition or establishing that the preconditions for extradition have been met.
- The files of the case along with the decision of the Pre-trial Chamber on the fulfilment of the preconditions for extradition are delivered to the Minister of Justice.
- The Minister of Justice issues a decision granting or refusing the extradition and notifies thereof the competent court, the person requested for extradition, the Ministry of Internal Affairs and the requesting state.

## **(8) SPECIAL RULES ON NATIONALS**

### **i. Extradition of nationals**

Not allowed.

See the preconditions for extradition, Article 16, paragraph 1, sub-paragraph 1 of the Law on mutual assistance in criminal matters.

### **ii. Institution of criminal proceedings against non-extradited nationals**

The provisions of Articles 41 to 48 provide for the conditions for assuming criminal prosecution.

Article 41 provides that the competent public prosecutor may assume criminal prosecution of a suspect or a defendant for the criminal offence falling under the jurisdiction of the requesting state.

Article 42 provides for the preconditions for the assumption of criminal prosecution, as follows:

- that the preconditions for international legal assistance referred to in Article 7 of the Law on mutual assistance in criminal matters are fulfilled,
- that the person concerned has the permanent or temporary residence in the Republic of Serbia, or
- that the person concerned is serving the prison sentence in the Republic of Serbia.

This type of criminal prosecution is regulated by Article 6, paragraph 3 of ETS 024.

## **(9) LANGUAGE OF THE REQUEST/TRANSLATION**

Article 5 of the Law on mutual assistance in criminal matters: letters rogatory and any supporting documents are submitted along with a translation into the language of the requested state or a translation into English. A copy of translation shall be certified by a court interpreter.

Article 10 of the Law on mutual assistance in criminal matters: The proceedings of international legal assistance, including the extradition proceedings, shall be conducted in Serbian, or in a language of national minorities if the proceedings are conducted before the national judicial authority in the territory where the languages of national minorities are official used, in accordance with the Constitution and law.

## 2.6.2 Requests for instituting proceedings & transfer of Proceedings

### (10) REQUESTS FOR INSTITUTING CRIMINAL PROCEEDINGS

#### i. Legal basis

##### *Multilateral treaties and Conventions*

- The European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073)
- The Republic of Serbia has ratified a large number of conventions regulating co-operation with respect to specified criminal offences and they also include the provisions on assuming and transferring criminal prosecution.

##### *Bilateral treaties*

- **Austria:** Treaty on legal assistance in criminal matters between the Socialist Federal Republic of Yugoslavia and the Republic of Austria of 01.02.1982, Articles 19 to 22 (Official Gazette of SFRY – International treaties, 2/1983, entered into force on 01.01.1984).
- **Belgium:** Convention on extradition and legal assistance in criminal matters between the Socialist Federal Republic of Yugoslavia and the Kingdom of Belgium of 04.06.1971, Articles 1 to 23 (Official Gazette of SFRY – Appendix 9/1973, entered into force on 01.11.1972) – assuming criminal prosecution is effected only with respect to nationals of the requested state for criminal offences they have committed in the territory of the requesting state which constitute criminal offences in both contracting states.
- **Bosnia and Herzegovina:** Treaty between Serbia and Montenegro and Bosnia and Herzegovina on legal assistance in civil and criminal matters of 24.02.2005, Articles 39 to 42 (Official Gazette of Serbia and Montenegro – International treaties, 6/2005, entered into force on 09.02.2006).
- **Czech Republic:** Treaty between the Socialist Federal Republic of Yugoslavia and the Czechoslovakian Socialist Republic on regulating legal relations in civil, family and criminal matters of 20.01.1964, Articles 63 to 80 (Official Gazette of SFRY – Appendix, 13/1964, entered into force on 02.08.1964) – assuming criminal prosecution is only effected with respect to nationals of the requested state.
- **Montenegro:** Treaty between the Republic of Serbia and Montenegro on legal assistance in civil and criminal matters of 29.05.2009.
- **Croatia:** Treaty between SFRY and Republic of Croatia on legal assistance in civil and criminal matters (15.09.1979 entered into force on 14.03.1998), Articles 28 to 31, assuming criminal prosecution is effected with respect to own nationals and persons with permanent residence in the requested state.
- **Hungary:** it is possible according to the bilateral treaty between SFRY and Hungary on mutual legal assistance in civil and criminal matters (Part III, Chapter I, Article 82). States parties are obliged to institute criminal proceedings against their own national who has committed an offence on the territory of the requested country, if that offence is an assumption for extradition; in accordance with their national legislation, upon a request of the other State party.
- **Iraq:** Treaty between the Socialist Federal Republic Yugoslavia and the Republic of Iraq on legal and judicial co-operation of 23.05.1986, Article 23, (Official Gazette of SFRY – International treaties, 1/1987, entered into force in 1987) – only with respect to own nationals.
- **“The former Yugoslav Republic of Macedonia”:** Treaty between Serbia and Montenegro and the Republic of Macedonia on legal assistance in civil and criminal matters, Articles 33 to 36 (Official Gazette of Serbia and Montenegro – International treaties, 22/2004, entered into force on 09.03.2005) – assuming criminal prosecution is effected with respect to own nationals and persons with permanent residence in the requested state.
- **Mongolia:** Treaty between the Socialist Federal Republic of Yugoslavia and Mongolian National Republic on legal assistance in civil, family and criminal matters of 08.06.1981, Article 61 (Official Gazette of SFRY – International treaties, 7/1982, entered into force on 24.03.1983) – only against own nationals.
- **Germany:** Treaty on legal assistance in criminal matters between the Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany of 01.10.1971, Article 18 (Official Gazette of SFRY – 33/1972, entered into force on 08.01.1975) – assuming criminal prosecution is effected with respect to own nationals and persons with habitual residence in the requested state.
- **Romania:** Treaty on legal assistance between SFRY and Republic of Romania (18.10.1960), only with respect to own nationals
- **Russian Federation:** Treaty between the Federation National Republic of Yugoslavia and the Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters of 24.02.1962, Article 57 (Official Gazette of FNRY – Appendix, 5/1963, entered into force on 26.05.1963) – only with respect to own nationals.
- **Slovakia:** same as with the Czech Republic.

## ii. National legislation

- Law on mutual assistance in criminal matters – Articles 41 to 48

Article 41 provides that the competent public prosecutor may assume criminal prosecution of a suspect or a defendant for the criminal offence falling under the jurisdiction of the court of the requesting state.

Article 42 provides for the preconditions for assuming criminal prosecution, as follows:

- that the preconditions for international legal assistance referred to in Article 7 of the Law on mutual assistance in criminal matters are fulfilled,
- that the person concerned has the permanent or temporary residence in the Republic of Serbia, or
- that the person concerned is serving the prison sentence in the Republic of Serbia.

Article 46 provides that the competent public prosecutor notifies the requesting state of the decision regarding the request for assumption of criminal prosecution and of the final decision taken in the assumed criminal proceedings.

## iii. Conditions

- Law on mutual assistance in criminal matters – Article 42 (see above under 2.8.2.1.2)

## iv. Procedure

- Law on mutual assistance in criminal matters – Articles 42 to 48

The Ministry of Justice delivers the letter rogatory and criminal files to the competent public prosecutor together with the opinion concerning fulfilment of the preconditions for the assumption of criminal prosecution referred to in Article 7 and Article 43 of the Law on mutual assistance in criminal matters. The competent public prosecutor takes a decision whether to assume the criminal prosecution. The proceedings are conducted according to the legislation of the Republic of Serbia.

# (11) TRANSFER OF PROCEEDINGS

## i. Legal basis

### *Multilateral treaties*

See above.

### *Bilateral treaties*

See above.

### *National legislation*

- Law on mutual assistance in criminal matters – Articles 49-55

Article 49 – provides that a national judicial authority may transfer to a foreign country criminal prosecution of the person suspected or accused of a criminal offence that falls within the jurisdiction of the competent national court.

## ii. Conditions

- if the preconditions stipulated by Article 7 of the Law on international legal assistance are met (that the transfer of the criminal prosecution does not refer to a political offence or an offence relating to a political offence, that is a criminal offence comprising solely a violation of military duties and that such transfer would not infringe upon sovereignty, security, public order or other interests of essential significance for the Republic of Serbia) and
- that the person has permanent or temporary residence in the requested state, or that the person serves the sentence of imprisonment or another criminal sanction involving deprivation of liberty in the requested state.

## iii. Procedure

- A decision to institute the proceedings for the transfer of criminal prosecution, depending on the stage of the criminal proceedings, is taken by the public prosecutor, investigating judge, the pre-trial chamber and the chamber.

- The letter rogatory and crime related documents are transmitted to the requested state, together with a request to take a decision on instituting the criminal prosecution within the shortest deadline possible (if the requested state fails to transmit the information about the institution of the criminal prosecution, the criminal prosecution instituted will continue).

## 2.6.3 Procedures for mutual legal assistance

### (12) LETTERS ROGATORY

#### i. Legal basis

##### *Multilateral treaties and conventions*

- The European Convention on Mutual legal Assistance in Criminal Matters (ETS 030) and its Additional Protocol (ETS 099)
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182)

##### *Bilateral treaties*

- **Albania:** Convention between the SFRY and Albania on extradition of convicted persons, Chapter B, Articles 14-18 (21.05.1929).
- **Algeria:** Treaty between the Socialist Federative Republic of Yugoslavia and the Democratic National Republic of Algeria on legal assistance in civil and criminal matters of 31.03.1982, Articles 27 to 31 (Official Gazette of SFRY – International treaties, 2/1983, entered into force on 29.12.1983).
- **Austria:** Treaty between the Socialist Federative Republic of Yugoslavia and the Republic of Austria on legal assistance in criminal matters of 01.02.1982 (Official Gazette of SFRY – International treaties, 2/1983, entered into force on 01.01.1984).
- **Belgium:** Convention on extradition and legal assistance in criminal matters between the Socialist Federative Republic of Yugoslavia and the Kingdom of Belgium of 04.06.1971, Part II, Articles 24 to 36 (Official Gazette of SFRY – Annex No. 9/1973, entered into force on 01.11.1972).
- **Bosnia and Herzegovina:** Treaty between Serbia and Montenegro and Bosnia and Herzegovina on legal assistance in civil and criminal matters of 24.02.2005, Articles 1-15, 32-42 (Official Gazette of Serbia and Montenegro – International treaties 6/2005, entered into force on 09.02.2006).
- **Bulgaria:** Treaty between the SFRY and the Republic of Bulgaria on mutual legal assistance Part II, Articles 54-65 (27.1.1957)
- **Czech Republic:** Treaty between the Socialist Federative Republic of Yugoslavia and the Czechoslovakian Socialist Republic on regulating legal relations in civil, family and criminal matters of 20.01.1964, Articles 1 to 17, 81 to 83 (Official Gazette of SFRY – Annex, 13/1964, entered into force on 02.08.1964).
- **Croatia:** Treaty between the SFRY and the Republic of Croatia on legal assistance in civil and criminal matters, Articles 1-13, 22-31 (14.03.1998)
- **France:** Convention between the Socialist Federative Republic of Yugoslavia and the French Republic on legal assistance in criminal matters of 29.10.1969 (Official Gazette of SFRY – International treaties, 16/1971, entered into force on 01.11.1971.).
- **Hungary:** Treaty between the SFRY and Hungary on mutual legal assistance, Articles 1 to 5, 73 to 83 (18.01.1969).
- **Iraq:** Treaty between the Socialist Federative Republic of Yugoslavia and the Republic of Iraq on legal and judicial co-operation of 23.05.1986, Articles 6 to 10, 18 to 19, (Official Gazette of SFRY – International treaties, 1/1987, entered into force in 1987).
- **Italy:** Convention between the FNRY and Italy on international legal assistance in criminal and administrative matters of 31.12.1960 (Official Gazette of FNRY – Annex 5/1960).
- **Cyprus:** Treaty between the Socialist Federative Republic of Yugoslavia and the Republic of Cyprus on legal assistance in civil and criminal matters of 19.10.1984, Articles 1 to 10, 27 to 38 (Official Gazette of SFRY – International treaties, 2/1986, entered into force on 15.02.1987).
- **“The former Yugoslav Republic of Macedonia”:** Treaty between Serbia and Montenegro and the [...] Republic of Macedonia on legal assistance in civil and criminal matters, Articles 1 to 12, 28 to 36 (Official Gazette of Serbia and Montenegro – International treaties, 22/2004, entered into force on 09.03.2005).
- **Mongolia:** Treaty between the Socialist Federative Republic of Yugoslavia and the Mongolian National Republic on legal assistance in civil, family and criminal matters of 08.06.1981, Articles 1 to 17, 61 – 64 (Official Gazette of SFRY – International treaties, 7/1982, entered into force on 24.03.1983).
- **Germany:** Treaty on legal assistance in criminal matters between the Socialist Federative Republic of Yugoslavia and the Federal Republic of Germany of 01.10.1971, Article 18 (Official Gazette of SFRY, 33/1972, entered into force on 08.01.1975).
- **Poland:** Treaty between the Federative National Republic of Yugoslavia and the National Republic of Poland on legal transactions in civil and criminal matters of 06.02.1960, Articles 1 to 5, 63 to 72 (Official Gazette of FNRY – Annex 5/1963, entered into force on 05.06.1963).
- **Romania:** Treaty between the SFRY and the Republic of Romania on mutual legal assistance, Articles 1 to 6, 59 to 67 (1.10.1961)

- **Russian Federation:** Treaty between the Federative National Republic of Yugoslavia and the Union of Soviet Socialist Republics on legal assistance in civil, family and criminal matters of 24.02.1962, Articles 2 to 16, 55 to 57 (Official Gazette of FNRJ – Annex 5/1963, entered into force on 26.05.1963).
- **Slovakia:** same as with the Czech Republic.
- **Spain:** Treaty between the Socialist Federative Republic of Yugoslavia and Spain on legal assistance in criminal matters and extradition of 08.07.1980, Articles 1 to 20 (Official Gazette of SFRY – International treaties, 3/1981, entered into force in 1982).
- **Turkey:** Convention on judicial legal assistance in criminal matters between the Socialist Federative Republic of Yugoslavia and the Republic of Turkey of 08.10.1973 (Official Gazette of SFRY – International treaties, 12/1976, entered into force on 03.05.1975).

#### ***National legislation***

- Law on mutual assistance in criminal matters, Articles 3 to 12.

#### **ii. Channels of communication (sending, receiving and returning of requests)**

##### ***Through the central authorities***

Through the Ministry of Justice according to the provision of Article 6, Paragraph 1 of the Law on mutual assistance in criminal matters.

- **Austria:** Ministries of Justice of the state members, and, in urgent cases, through INTERPOL (Article 6 of the bilateral treaty)
- **Belgium:** Ministries of Justice of the state members (Article 26 of the bilateral treaty)
- **Bosnia and Herzegovina:** Ministries of Justice of Justice and, in urgent cases, through INTERPOL (Article 4 of the bilateral treaty)
- **Bulgaria:** Ministries of Justice of the state members of the State Union, Ministry of justice of the Republic of Bulgaria (Article 7 of the bilateral treaty);
- **Croatia:** Ministries of Justice and, in urgent cases, through INTERPOL, diplomatic channels not excluded (Article 4 of the bilateral treaty)
- **Hungary:** Ministries of Justice of the state members of the State Union, Attorney general of Republic of Hungary (Article 2 of the bilateral treaty).
- **Cyprus:** Ministries of Justice and, in urgent cases, through INTERPOL (Article 2 of the bilateral treaty)
- **“The former Yugoslav Republic of Macedonia”:** Ministries of Justice and in, urgent cases, through INTERPOL, diplomatic channels not excluded (Article 3 of the bilateral treaty)
- **Germany:** Ministries of Justice and, in urgent cases, through INTERPOL (Article 13 of the bilateral treaty)
- **Poland:** Ministries of Justice (Article 2 of the bilateral treaty)
- **Romania:** Ministries of Justice and the State Prosecutor of Romania in pre-trial proceedings (Article 4 of bilateral treaty)
- **Turkey:** Ministries of Justice and, in urgent cases, direct communication between the judicial authorities

##### ***Through diplomatic channels***

At the request of the requested state, letters rogatory and other supporting documents are transmitted through diplomatic channels (Article 6, paragraph 1 of the Law on mutual assistance in criminal matters).

- Bilateral treaties with: **France** (Article 4), **Iraq** (Article 8), **Mongolia** (Article 4), **Russian Federation** (Article 3), **Spain** (Article 2) provide that communication between the state authorities in the mutual assistance proceedings takes place through diplomatic channels.

##### ***Through direct contacts***

Letters rogatory and supporting documents, subject to reciprocity, may be transmitted directly to a foreign judicial authority and through INTERPOL (Article 6, paragraph 2 of the Law on mutual assistance in criminal matters), but in those cases national judicial authorities shall submit a copy of the letter rogatory to the Ministry of Justice (Article 6, paragraph 4 of the Law on mutual assistance in criminal matters).

#### **iii. Form and content of requests for mutual legal assistance**

##### ***Information to be included in a request***

Article 5 of the Law on mutual assistance in criminal matters provides that the letters rogatory shall include:

- 1) name of the authority that has designed the letter rogatory;
- 2) name of the authority to whom the letter rogatory shall be addressed, or, if its accurate name is not known, it will be designated 'competent state authority' next to the name of the requested state;
- 3) legal grounds for execution of the request for mutual assistance;

- 4) the designation of the criminal case, the name of the criminal offence as specified under the law, text of a relevant provision of the law and a summary of facts;
- 5) description of actions relating to the requested mutual assistance and reasons for submitting the letter rogatory;
- 6) citizenship and other personal data of the person, i.e. the name and the seat of the legal entity being the subject of the request for mutual assistance, including its capacity in the proceeding;
- 7) other data that may be relevant to proceeding upon the letter rogatory.

The letter rogatory must be signed and duly authenticated by the competent authority. The letter rogatory is transmitted together with a translation into the language of requested state or a translation into English. The translation must be stamped by the certified court interpreter.

**Note:** All bilateral international treaties binding on Serbia in the field of mutual legal assistance in criminal matters (listed 2.8.3.1.1.2) prescribe the content of the letter rogatory, which is similar to the one required by Article 5 of the Law on mutual assistance in criminal matters.

**List of measures which may be provided**

Possible measures include:	Legal basis
Interrogation (of the accused, hearing of witnesses and experts)	<p>Interrogation of the accused/hearing of witnesses/expert witnesses:</p> <p>Yes – Article 83, paragraph 1, sub-paragraph 1 of the Law on mutual assistance in criminal matters</p> <ul style="list-style-type: none"> <li>- Articles 14-15 of the bilateral treaty with Albania</li> <li>- Article 28 of the bilateral treaty with Algeria</li> <li>- Article 3 of the bilateral treaty with Austria</li> <li>- Article 32 of the bilateral treaty with Bosnia and Herzegovina</li> <li>- Article 55 of the bilateral treaty with Bulgaria</li> <li>- Article 3 of the bilateral treaty with the Czech/Slovakia</li> <li>- Article 23 of the bilateral treaty with Croatia</li> <li>- Articles 10-13 of the bilateral treaty with France</li> <li>- Article 35 of the bilateral treaty with Greece</li> <li>- Article 6 of the bilateral treaty with Iraq</li> <li>- Article 75 of the bilateral treaty with Hungary</li> <li>- Article 29 of the bilateral treaty with “The former Yugoslav Republic of Macedonia”</li> <li>- Article 3 of the bilateral treaty with Mongolia</li> <li>- Article 63 of the bilateral treaty with Poland</li> <li>- Article 72 of the bilateral treaty with Russia</li> <li>- Article 59 of the bilateral treaty with Romania</li> <li>- Article 12 of the bilateral treaty with Spain</li> <li>- Articles 2 and 11 of the bilateral treaty with Turkey</li> </ul>
Temporary surrender for the purpose of being examined (as a witness or as an expert)	<p>Yes – Article 92 of the Law on mutual assistance in criminal matters</p> <ul style="list-style-type: none"> <li>- Article 28 of the bilateral treaty with Algeria</li> <li>- Articles 13-14 of the bilateral treaty with Austria</li> <li>- Article 34 of the bilateral treaty with Bosnia and Herzegovina</li> <li>- Article 59 of the bilateral treaty with Bulgaria</li> <li>- Article 35 of the bilateral treaty with Greece</li> <li>- Article 6 of the bilateral treaty with Iraq</li> <li>- Article 24 of the bilateral treaty with Croatia</li> <li>- Article 77 of the bilateral treaty with Hungary</li> <li>- Article 29 of the bilateral treaty with “The former Yugoslav Republic of Macedonia”</li> </ul>



	<ul style="list-style-type: none"> <li>- Article 3 of the bilateral treaty with Mongolia</li> <li>- Article 63 of the bilateral treaty with Poland</li> <li>- Article 72 of the bilateral treaty with Russia</li> <li>- Article 62 of the bilateral treaty with Romania</li> <li>- Article 11 of the bilateral treaty with Spain</li> </ul>
Crime scene investigation, search of premises and persons, temporary seizure and confiscation of objects	<p>Yes – Article 83, paragraph 1, sub-paragraph 1 of the Law on mutual assistance in criminal matters</p> <ul style="list-style-type: none"> <li>- Article 28 of the bilateral treaty with Algeria</li> <li>- Article 3 of the bilateral treaty with Austria</li> <li>- Article 32 of the bilateral treaty with Bosnia and Herzegovina</li> <li>- Article 55 of the bilateral treaty with Bulgaria</li> <li>- Article 35 of the bilateral treaty with Greece</li> <li>- Article 6 of the bilateral treaty with Iraq</li> <li>- Article 23 of the bilateral treaty with Croatia</li> <li>- Article 75 of the bilateral treaty with Hungary</li> <li>- Article 29 of the bilateral treaty with “The former Yugoslav Republic of Macedonia”</li> <li>- Article 64 of the bilateral treaty with Mongolia</li> <li>- Article 8 of the bilateral treaty with Germany</li> <li>- Article 63 of the bilateral treaty with Poland</li> <li>- Article 72 of the bilateral treaty with Russia</li> <li>- Article 59 of the bilateral treaty with Romania</li> <li>- Article 13 of the bilateral treaty with Spain</li> </ul>
Tracing, identification, freezing and confiscation of objects used for the commission of the criminal offence or obtained by the commission of the criminal offence	<p>Yes – Article 82 the Law on mutual assistance in criminal matters</p> <ul style="list-style-type: none"> <li>- Article 32 of the bilateral treaty with Bosnia and Herzegovina</li> <li>- Article 80 of the bilateral treaty with the Czech/Slovakia</li> <li>- Article 37 of the bilateral treaty with Greece</li> <li>- Article 23 of the bilateral treaty with Croatia</li> <li>- Article 64 of the bilateral treaty with Mongolia</li> <li>- Article 72 of the bilateral treaty with Russia</li> <li>- Article 59 of the bilateral treaty with Romania</li> </ul>
Special investigative measures:	<p>Yes – Article 83, paragraph 1, sub-paragraphs 2 and 3 of the Law on mutual assistance in criminal matters</p> <p><i>Bilateral treaties do not include special provisions on this.</i></p>
- telecommunications interception	
- tapping	
-surveillance	
- delivery of objects	
- undercover operations	
- controlled deliveries	
- conclusion of simulated businesses and provision of simulated services	

**Specific requirements: dual criminality/Reciprocity**

Both are required.

- Article 3, paragraph 2 of the Law on mutual assistance in criminal matters provides that mutual legal assistance shall be provided in the case of the criminal offences falling within the jurisdiction of the requesting state, while Article 7, paragraph 1, sub-paragraph 1 of the same Law provides that a precondition for rendering mutual assistance is that the criminal offence motivating the request for mutual assistance constitutes a criminal offence under the legislation of the Republic of Serbia.
- Article 8 of the Law on mutual assistance in criminal matters provides for reciprocity as a precondition for mutual legal assistance.

### ***Language of the request/translation***

Article 5, paragraph 4 of the Law on mutual assistance in criminal matters: Letters rogatory and accompanying documents are submitted together with a translation in the language of the requested state or with a translation into English. The translation must be certified by the certified court interpreter.

#### **iv. Grounds for refusal of an assistance request**

Article 7 of the Law on mutual assistance in criminal matters provides for preconditions for rendering mutual assistance as follows:

- 1) the criminal offence, in respect of which legal assistance is requested, constitutes the offence under the legislation of the Republic of Serbia;
- 2) the proceedings on the same offence have not been fully completed before the national court, that is, a criminal sanction has not been fully executed;
- 3) the criminal prosecution, that is, the execution of a criminal sanction is not excluded due to the state of limitations, amnesty or an ordinary pardon;
- 4) the request for legal assistance does not refer to a political offence or an offence relating to a political offence, that is, a criminal offence comprising solely violation of military duties;
- 5) the execution of requests for mutual assistance would not infringe sovereignty, security, public order or other interests of essential significance to the Republic of Serbia.

Notwithstanding paragraph 1, sub-paragraph 4 of this Article, mutual legal assistance shall be granted in respect of the criminal offence against international humanitarian law that is not subject to the state of limitations.

Other forms of mutual legal assistance may be provided (Article 83 of the Law on mutual assistance in criminal matters) if the following preconditions, in addition to those listed in Article 7 of the Law, are met:

- if the conditions envisaged by the Criminal Procedure Code are met,
- if there are no criminal proceedings pending against the same person before the national courts for the criminal offence being subject of the requested mutual assistance.

International bilateral treaties obliging Serbia provide that a request for mutual legal assistance may be refused:

- if legal assistance is requested in respect of the criminal offence which the requested state recognises as a political offence, tax offence or military offence,
- if the requested state considers that the execution of the request for mutual assistance would infringe its sovereignty, security, public order or other interests of essential significance to the Republic of Serbia,
- if the criminal offence motivating the request for mutual assistance does not constitute a criminal offence under the legislation of the requested state.

#### **v. Issuing and executing a request**

##### ***Competencies of the national authorities***

###### Submission of letters rogatory:

The authorities competent to exercise mutual assistance shall include national courts and public prosecutor's offices ("judicial authorities") – Article 4 of the Law on mutual assistance in criminal matters. Letters rogatory and other annexed documents of the national judicial authority shall be transmitted to foreign authorities through the Ministry of Justice (Article 6, paragraph 1 of the Law on mutual assistance in criminal matters), or directly to the foreign authority under the principle of reciprocity.

###### Execution of letters rogatory:

Letters rogatory and other annexed documents shall be transmitted to the national competent judicial authority through the Ministry of Justice or directly to the national authority under the principle of reciprocity. The Ministry of Justice shall transmit the letter rogatory together with the opinion whether the preconditions provided for in Article 7 of the Law on mutual assistance in criminal matters have been met.

*Note: in cases of urgency letters rogatory may be submitted through INTERPOL.*

##### ***Procedure***

Article 12 of the Law on mutual assistance in criminal matters: provides that provisions of the Criminal Procedure Code and other laws regulating the organisation and jurisdiction of courts and public prosecutors shall apply to the mutual assistance proceedings.

Article 90 of the Law on mutual assistance in criminal matters: provides that, on the request of the competent authority of the requesting state, other forms of mutual assistance shall be provided in a manner foreseen in

the legislation of the requesting state, unless it runs contrary to the basic principles of the legal system of the Republic of Serbia.

**vi. Costs of assistance**

Article 11 of the Law on mutual assistance in criminal matters provides that costs incurred during the proceeding on mutual assistance shall be borne by the requested state, unless otherwise specified by the Law on mutual assistance in criminal matters.

Bilateral treaties also provide that costs are borne by the state party in the territory of which the request for mutual assistance is executed (the requested state).

**(13) REQUESTS FOR SERVING OF SUMMONSES, JUDGMENTS AND OTHER PROCEDURAL DOCUMENTS**

According to Article 6 of the Law on mutual assistance in criminal matters (see above).

According to bilateral treaties with:

- **Austria:** Article 6
- **Belgium:** Article 33
- **Bosnia and Herzegovina:** Article 32
- **Bulgaria:** Article 55
- **Czech Republic:** Articles 3 and 8
- **Croatia:** Article 23
- **France:** Article 3
- **Hungary:** Article 75
- **Iraq:** Article 6
- **“The former Yugoslav Republic of Macedonia”:** Article 29
- **Mongolia:** Article 3
- **Germany:** Article 4
- **Poland:** Article 12
- **Romania:** Article 59
- **Slovakia:** Articles 3 and 8
- **Spain:** Article 9
- **Turkey:** Article 5.

**(14) EXCHANGE OF CRIMINAL RECORDS**

Article 83, paragraph 1, sub-paragraph 3 of the Law on mutual assistance in criminal matters provides for exchange of information and delivery of writs and cases related to criminal proceeding pending in the requesting state.

Article 98 of the Law on mutual assistance in criminal matters provides that the judicial authorities, under the condition of reciprocity, may transmit information relating to known criminal offences and perpetrators, without letter rogatory, if this is considered to be of use to criminal proceedings conducted abroad.

Bilateral international treaties:

- **Algeria:** Article 29
- **Austria:** Article 24
- **Belgium:** Articles 31-32
- **Bosnia and Herzegovina:** Article 37
- **Bulgaria:** Article 62
- **Czech Republic:** Article 83
- **France:** Articles 3, 14
- **Greece:** Article 40
- **Croatia:** Article 26
- **Iraq:** Article 19
- **“The former Yugoslav Republic of Macedonia”:** Article 29
- **Mongolia:** Article 63
- **Germany:** Articles 11, 22
- **Poland:** Article 70
- **Russia:** Article 74
- **Slovakia:** Article 83
- **Spain:** Article 15
- **Turkey:** Article 15.

## 2.6.4 Transfer of sentenced persons & validity of foreign judgments

### (15) TRANSFER OF SENTENCED PERSONS

#### i. Legal basis

- The European Convention on the Transfer of Sentenced Persons (ETS 112) and its additional protocol (ETS 167).
- Law on mutual assistance in criminal matters: Execution of a foreign criminal judgment with transfer (Articles 65-69)

#### ii. Conditions

According to Article 3 of ETS 112:

- a) if the person is a national of the administering state,
- b) if the judgment is final,
- c) if, at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or if the sentence is indeterminate,
- d) if the transfer is consented to by the sentenced person or, where in view of his age or his physical or mental condition one of the two states considers it necessary, by the sentenced person's legal representative,
- e) if the act of omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory, and
- f) if the sentencing and administering States agree to transfer.

The Law on mutual assistance in criminal matters requires that the sentenced person must be a citizen of the Republic of Serbia who, in a foreign state, serves the criminal sanction consisting in the deprivation of liberty.

The Minister of Justice may refuse the transfer if, at the time of the receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve which consists in the deprivation of liberty.

#### iii. Procedures

See Articles 5 to 15 of the European Convention on the Transfer of Sentenced Persons (ETS 112).

The Law on mutual assistance in criminal matters provides for proceedings as for the execution of a foreign criminal conviction (Articles 61 to 64).

### (16) VALIDITY OF FOREIGN JUDGMENTS

The Law on mutual assistance in criminal matters: Articles 56-64

A foreign judicial authority submits a letter rogatory with a certified transcript of the criminal judgment of the foreign court (Article 57).

The conditions for execution (Article 58)

a) that the preconditions referred to in Article 7 of the Law on mutual assistance in criminal matters (general preconditions for mutual legal assistance, see above) are met as well as one of the following condition:

- that the convict is a citizen of Serbia;
- that the convict has permanent or temporary residence in the Republic of Serbia;
- that the convict is serving a criminal sanction consisting in the deprivation of liberty for a prior conviction.

The Ministry of Justice submits to the competent court a letter rogatory with a certified transcript of the criminal judgment the execution of which is requested together with the opinion whether the preconditions of Article 7, paragraph 1, sub-paragraphs 4 and 5 and Article 63, sub-paragraph 4 (the requirements of a fair trial) (Article 61 of the Law on mutual assistance in criminal matters) are met.

If the court accepts the letter rogatory, it shall pass a decision recognising the foreign criminal judgment, pronouncing the criminal sanction in accordance with the criminal legislation of the Republic of Serbia. The pronounced conviction may not be more severe than the sanction pronounced in the foreign criminal judgment (Article 62 of the Law on mutual assistance in criminal matters).

## 2.6.5 Contact details of competent authorities and list of contact points

Ministry of Justice of the Republic of Serbia	<p>Mr. Vojkan Simić Assistant Minister in charge of Normative Affairs and International Cooperation</p> <p>Ministarstvo pravde (Ministry of Justice) Nemanjina 22-26 11000 Beograd Tel: + 381 11 31 11 473 e-mail: int.legal.assist.srb@mpravde.gov.rs</p>	<p>Complete international legal assistance</p> <p>Languages spoken: Serbian and English</p>
	<p>Ms. Ines Cerović</p> <p>Ministarstvo pravde (Ministry of Justice) Tel: + 381 11 36 31 779 e-mail: ines.cerovic@mpravde.gov.rs</p>	<p>Languages spoken: Serbian and English</p>

## 2.7 "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

### 2.7.1 Extradition procedures

#### (1) LEGAL BASIS

##### i. Multilateral treaties and conventions

- European Convention on Extradition (ETS 024)
- Additional Protocol to the European Convention on Extradition (ETS 086)
- Second Additional Protocol to the European Convention on Extradition (ETS 098)

##### ii. Bilateral treaties

- With parties to ETS 024: Bulgaria, Croatia, Albania (Official Gazette 16/96), Romania, Moldova, Hungary, Serbia and Montenegro, Slovenia.
- Bosnia and Herzegovina: through diplomatic channels, application of the principle of reciprocity

Agreement between "The former Yugoslav Republic of Macedonia" and the Republic of Turkey on legal assistance in civil and criminal matters (Official Gazette of the Republic of Macedonia no. 23/97)

Agreement between "The former Yugoslav Republic of Macedonia" and Bosnia and Herzegovina on extradition (Official Gazette no. 59/06)

##### iii. National legislation

See Chapter XXXIII of the Criminal Procedure Code – Procedure for extradition of accused and convicted persons and procedure for transfer of convicted persons

#### (2) DETENTION OF REQUESTED PERSON

##### i. Provisional arrest for extradition (conditions and channel of communication)

###### *Upon a request*

For parties to ETS 024: according to Article 16, via INTERPOL.

The request shall be submitted via diplomatic channels, post or telegram, through INTERPOL or otherwise, leaving written trace or a in a manner acceptable for the requested party

For Serbia and Montenegro: the communication in legal assistance is conducted directly between the Ministries of Justice.

###### *Without a request*

In the absence of a rogatory letter for extradition, detention is possible if there is an international warrant from INTERPOL. It is also possible on the basis of the bilateral agreements concluded with Bulgaria (article 75 of the bilateral treaty), Hungary (article 93 of the bilateral treaty) and Romania (article 73 of the bilateral treaty).

In practice, when there is international warrant issued, the person shall be detained according to Article 563 of the Criminal Procedure Code (the international warrant shall be accepted as a request containing data to determine the identity of the foreigner, the nature and title of the criminal offence, the number of the decision, date, place and title of the foreign authority determining the detention and a statement that the extradition shall be requested in a regular manner).

Within 40 days since the day of detention, a request for extradition, including all documents foreseen in Article 12 of the Convention, must be submitted.

##### ii. Arrest for extradition (conditions and channel of communication)

###### *Obligatory*

If the conditions for extradition are fulfilled, the investigative judge of the competent court shall order the arrest the arrest for extradition of the person sought for extradition.

See Article 570 of the Criminal Procedure Code – the Ministry of the Interior orders the requested person to be apprehended to the border.

### ***Non-obligatory***

It is possible only with Bulgaria, according to article 74 of the bilateral treaty.

### **(3) CHANNELS OF COMMUNICATION FOR EXTRADITION REQUESTS**

Extradition requests must be sent to the International Law Department of the Ministry of Justice.  
The request sent by fax is also accepted if the original documents have been sent by post at the same time.  
The use of diplomatic channels is not excluded, but it is not practical as it is too slow.

### **(4) FORM AND CONTENT OF REQUESTS FOR EXTRADITION**

For the countries parties to ETS 024: see Article 12 of the convention.  
For the other countries : see national legislation provisions (Article 561 paragraph 3 of the Criminal Procedure Code).

### **(5) GROUNDS FOR REFUSAL OF AN EXTRADITION REQUEST**

#### **i. Mandatory grounds**

- Political offences: Article 3 of ETS 024 and Article 1 of the Additional Protocol (ETC 086)
- Military offences: Article 4 of ETS 024
- Non bis in idem : Article 9 of ETS 24 and Article 2 of the Additional Protocol (ETC 086)
- Lack of time: Article 10 of ETS 024
- Offences which are punished by up to three years imprisonment according to the domestic legislation (article 518)
- Refusal of the request (Article 568).
- For citizens of "The former Yugoslav Republic of Macedonia" (Constitution)

#### **ii. Optional grounds**

- Fiscal offences

### **(6) ISSUING AND EXECUTING AN EXTRADITION REQUEST**

#### **i. Competencies of the national authorities involved in the procedure**

#### ***Outgoing requests***

According to article 572 of the CPC, the Ministry of Justice shall submit an application for extradition enclosing documents and data. The enclosed documents and data shall be provided from the court, the Ministry of Internal Affairs, the prison i.e. from the competent authority.

#### ***Incoming requests***

See articles 561 to 571 of the Criminal Procedure Code which apply:

- The request for extradition from a foreign country is communicated through the channels agreed upon according to ETS 024 or according to the provisions of a bilateral treaty.
- The request for extradition is forwarded to the investigative judge of the district court on whose territory the person claimed resides or is under provisional arrest (article 562 of the CPC).
- The investigative judge hears the person claimed, his defence counsel and the state prosecutor. If necessary, the investigative judge makes other inquiries to establish whether the legal conditions for extradition are fulfilled. After completed inquiries, the investigative judge sends the file together with his opinion to the Chamber (articles 562 and 564 of the CPC).
- The chamber of the competent court decides on the question whether the legal conditions for extradition are fulfilled according to article 560 of the CPC. There are two possible outcomes:
  - a) if the chamber established that the legal conditions are not fulfilled, it issues a decision on refusing extradition. This decision is sent to the Supreme Court to be confirmed, annulled or modified. If the foreigner is imprisoned, the chamber may decide that the person remains in prison until the decision on refusing extradition becomes valid. The final decision on refusing extradition is communicated to the foreign country through the Ministry of Justice. The Ministry of Justice has no decision power in this procedure.

The Minister of Justice shall issue a decision refusing extradition according to Article 568 of the Criminal Procedure Code.

- b) If the chamber established that the legal conditions are fulfilled, it issues a decision, against which the person claimed has the right to appeal (article 560 of the CPC).
- The Court proceedings regarding extradition in this stage are finished. The court's decision on the legal grounds for extradition together with the court file is sent to the Ministry of Justice. The Ministry of Justice issues a ruling whereby extradition is either granted, refused or postponed (article 568 of the CPC).

## **ii. Procedure**

### ***Rule of speciality***

See Article 14 of ETS 024.

### ***Simplified extradition procedure***

Such a procedure does not exist at the moment.

### ***Surrender of the person***

See Article 18 of ETS 024 and article 570 of the CPC.

### ***Postponed or conditional surrender***

See Article 19 of ETS 024.

## ***Extradition procedures in "The former Yugoslav Republic of Macedonia"***

### **Outgoing requests**

Information from a foreign country about the arrest of a person wanted by the court (via channels of communication agreed upon by bilateral or multilateral agreements, usually via INTERPOL) => Ministry of Justice => competent Basic court gathering necessary documentation => Ministry of Justice making the request and sending court documents to foreign country.

### **Incoming requests**

Foreign country making request for extradition => through the Ministry of Justice (International Law department => to competent Basic court (which established whether the legal conditions for extradition exist):

- if YES: the decision on the existence of legal conditions is sent to the Ministry of Justice together with court files => Ministry of Justice issues the final decision on allowing or refusing extradition
- if NO: the competent Basic court issues a decision that extradition is refused => the Ministry of Justice sends the decision on refusing extradition to foreign country.

The request sent by fax is also accepted if the original documents have been sent by post at the same time. The use of diplomatic channel is not excluded, but it is not practical because it is too slow.

## **(7) SPECIAL RULES ON NATIONALS**

### **i. Extradition of nationals**

Extradition of nationals is prohibited according to the Constitution (article 4) and the Criminal Procedure Code.

### **ii. Institution of criminal proceedings against non-extradited nationals**

The request for instituting criminal proceedings together with all the files is submitted to the competent State Prosecutor's Office that decides upon institution of criminal proceedings, according to article 6 paragraph 2 of ETS 024.

In practice, for foreign citizens and criminal proceedings, article 21 of ETS 030.

## **(8) LANGUAGE OF THE REQUEST/TRANSLATION**

Documents translated to one of the EU languages shall be accepted. The documents translated into Macedonian language shall be submitted to the court.



## 2.7.2 Requests for instituting proceedings & transfer of proceedings

### (9) REQUESTS FOR INSTITUTING CRIMINAL PROCEEDINGS

#### i. Legal basis

##### ***Multilateral treaties and conventions***

See the European Convention on Mutual Assistance in Criminal Matters (ETS 030) and its first and second additional protocols.

##### ***Bilateral treaties***

With: Albania (Official Gazette 16/98), Bulgaria, Croatia (Official Gazette of RM 17/95), Hungary, Romania and Slovenia (Official Gazette 24/96), Serbia and Montenegro (Official Gazette 77/04), Bosnia and Herzegovina (Official Gazette 10/06), Turkey (Official Gazette 23/97).

##### ***National legislation***

See the Criminal Procedure Code.

#### ii. Conditions

The offence must be considered a criminal offence by the Criminal Code.

#### iii. Procedure

The Prosecutor General's Office examines the foreign criminal file to decide if there are sufficient evidences for prosecution in conformity with the national legislation. If there are sufficient evidences, the criminal proceedings are instituted and set to the competent investigative judge. If not, an ordinance of refusal to institute criminal proceedings is emitted. The requested state is informed about the decision.

### (10) TRANSFER OF PROCEEDINGS

#### i. Legal basis

##### ***Multilateral treaties and conventions***

See the European convention on the transfer of proceedings in criminal matters (ETS 073).

##### ***National legislation***

See article 557 of the Criminal Procedure Code:

(1) If on the territory of the [former Yugoslav] Republic of Macedonia a crime has been committed by a foreigner who has a residence in a foreign country, out of the circumstances under Article 560 of this Code, to that country may be transferred all criminal records for the criminal prosecution and trial, if the foreign country is not against it.

(2) Before the decision for investigation is brought, the decision for transferring is brought by the competent public prosecutor. During the investigation, the decision on the proposal of the public prosecutor is brought by the investigating judge, and by the beginning of the trial, the Chamber (Article 22, paragraph 6).

(3) Transferring may be allowed for crimes for which a sentence to ten years is anticipated, as well as for the crimes – endangering the public traffic.

(4) If the damaged is a citizen of the [former Yugoslav] Republic of Macedonia, transferring is not allowed if he resists it, unless it is allowed security for realization of his lawful property request.

(5) If the accused is detained, from the foreign country it will be requested in the briefest possible way within 40 days to state whether it undertakes the prosecution.

#### ii. Conditions

In accordance with the Criminal Procedure Code and ETS 073.

#### iii. Procedure

In accordance with the Criminal Procedure Code and ETS 073.

## 2.7.3 Procedures for mutual legal assistance

### (11) LETTERS ROGATORY

#### i. Legal basis

##### **Multilateral treaties and conventions**

See the European Convention on Mutual Assistance in Criminal Matters (ETS 030) and its first and second additional protocols.

##### **Bilateral treaties**

With Croatia (Official Gazette of RM n° 19/95), Slovenia (Official Gazette of RM n° 24/96), Albania (Official Gazette 16/98), Serbia and Montenegro (Official Gazette 77/04), Bosnia and Herzegovina (Official Gazette 10/06) and Turkey (Official Gazette 23/97).

##### **National legislation**

See article 551 of the Criminal Procedure Code: international judicial criminal assistance is performed according to its provisions unless an international treaty provides otherwise.

#### ii. Channels of communication (sending, receiving and returning of requests)

##### **Through direct contacts**

Communications take place through the contact points in the Ministry of the Interior, the Ministry of Justice (Department of MLA) and the competent courts.

##### **Through central authorities**

The request can be sent to the Ministry of Justice or INTERPOL in cases of emergency. In urgent cases, requests can be sent by foreign authorities through the INTERPOL Office in Skopje, replies are being returned through the Ministry of Justice.

##### **Through diplomatic channels**

The use of diplomatic channel is not excluded but it is not practical because it is too slow.

#### iii. Form and content of requests for mutual legal assistance

##### **List of measures which may be provided**

Measures possible include:	Legal basis/information to be included
Hearings (including interrogation and confrontation, identification of persons and objects)	Criminal Procedure Code: articles 230-250
Transfer of persons deprived of liberty for the purpose of hearing	
Search and seizure of evidence	ETC 030
Search, identification, freezing, seizure and confiscation of instrumentalities and proceeds of crime	ETS 030. Criminal Procedure Code: Articles 214-227
Use of special investigative means (SIMs)	Criminal Procedure Code, Articles: 146-159

##### **Information to be included in a request**

- Legal basis for the request
- Requesting authority
- Purpose of the request
- Person against whom criminal proceedings have been initiated
- Summary of the facts/legal qualification of the offence
- Reasons for the request
- Other provisions and exceptions

***Specific requirements: dual criminality/Reciprocity***

Both are required.

***Language of the request/translation***

Requests can be made in English, French and Macedonian.

**iv. Grounds for refusal of an assistance request**

For Parties to ETS 030: according to article 2 of ETS 030.

**v. Issuing and executing a request**

***Competencies of the national authorities***

Issuing authorities: courts and state prosecutor's offices.

Requests are communicated through channels provided for in international treaties.

Executing authorities: courts and state prosecutor's offices.

***Procedure***

According to national legislation and international treaties.

**vi. Costs of assistance**

For Parties to ETS 030: according to articles 9 and 20.

For non Parties, the ordinary costs are borne by the requested party.

**(12) REQUESTS FOR SERVING OF SUMMONSES, JUDGMENTS AND OTHER PROCEDURAL DOCUMENTS**

For parties to ETS 030: see Article 7.

**(13) EXCHANGE OF CRIMINAL RECORDS**

ETS 030: see Article 13.

## **2.7.4 Transfer of sentenced persons & validity of foreign judgments**

### **(14) TRANSFER OF SENTENCED PERSONS**

#### **i. Legal basis**

- Convention on the Transfer of sentenced persons (ETS 112) and its Additional protocol (ETS 167).
- Bilateral agreements regarding mutual execution of court decisions in criminal matters, which regulate the transfer of sentenced persons, have been signed with Slovenia (Official Gazette 24/96) , Albania and Croatia, Serbia, Montenegro and Bosnia and Herzegovina.
- See also the relevant provisions of the Criminal Procedure Code.

#### **ii. Conditions**

In line with the national legislation, a person sentenced abroad can only serve the sentence in "the former Yugoslav Republic of Macedonia" if the foreign sentence is recognized by the domestic court.  
See also Article 3 of ETS 112.

#### **iii. Procedures**

See ETS 112: Articles 5 to 15

The judgment shall be in effect.

The enforcement of a foreign judgment after recognition is done according to the provisions of the Criminal Procedure Code.

### **(15) VALIDITY OF FOREIGN JUDGMENTS**

The procedure for transfer of sentenced persons shall be conducted according to the provisions of the Criminal Procedure Code if it is not otherwise determined in the European Convention on Transfer of Sentenced Persons or in the Additional Protocol and other international agreements ratified in compliance with the Constitution of "The former Yugoslav Republic of Macedonia".

## 2.7.5 Contact details of competent authorities and list of contact points

Ministry of justice	<p><b>Mr. Vladimir PANCEVSKI</b> Cyber&amp; web division contact officer Krste Misirkov b.b, Skopje Tel + 389 2 3229314 Fax + 389 2 3161267 E-mail: pancevski@jorm.org.mk</p> <p><b>Mrs. Vera CVETANOVSKA</b> Head of the Department for MLA Velho Vlahovic b.b. Skopje Tel + 389 2 3117 288 Fax + 389 23 226 975</p> <p><b>Ms Lidija KOJCEVA</b> Advisor, Mutual Legal Assistance Division "Dimitrie Cupovski" number 9 1000 Skopje, Tel + 389 2 3 106 567 Fax + 389 2 3 226 975</p>	<p>Language spoken: English</p> <p>Language spoken : French</p> <p>Language spoken: English</p>
Prosecution Office	<p><b>Mr Sterjo ZIKOV</b> Public Prosecutor – Skopje " 12 Udarina Brigada" number 2 1000 Skopje, Tel + 389 2 3 111 192 Fax + 389 2 3 133 238</p>	<p>Language spoken: English</p>
Ministry of Interior	<p>Interior <b>Mr. Antonio SANEV</b> Advisor Dimce Mircev bb, 1000 Skopje Tel + 389 70364 686 E-mail : santonio@justice.com</p>	<p>Language spoken: English</p>



### 3 APPENDICES

## 3.1 APPENDIX 1: MULTILATERAL AND BILATERAL AGREEMENTS

### 3.1.1 Multilateral treaties

#### (1) ALBANIA

Status of relevant international instruments	Opening for signature	Signature	Ratification or accession	Entry into force
European Convention on Extradition (ETS 024)	13.12.1957	19.05.1998	19.05.1998	17.08.1998
- Additional Protocol to ETS 024 (ETS 086)	15.10.1975	19.05.1998	19.05.1998	17.08.1998
- Second Additional Protocol to ETS 024 (ETS 098)	17.03.1978	19.05.1998	19.05.1998	17.08.1998
European Convention on Mutual Assistance in Criminal Matters (ETS 030)	20.04.1959	19.05.1998	04.04.2000	03.07.2000
- Additional Protocol to ETS 030 (ETS 099)	17.03.1978	19.05.1998	04.04.2000	03.07.2000
- Second Additional Protocol to the ETS 030 (ETS 182)	08.11.2001	13.11.2001	20.06.2002	
European Convention on the International Validity of Criminal Judgments (ETS 070)	28.05.1970	08.06.2000	22.10.2003	23.01.2004
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073)	15.05.1972	19.05.1998	04.04.2000	05.07.2000
Convention on the Transfer of Sentenced Persons (ETS 112)	21.03.1983	19.05.1998	04.04.2000	01.08.2000
- Additional Protocol to ETS 112 (ETS 167)	18.12.1997			
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108)	28.01.1981	09.06.2004	14.02.2005	01.06.2005
- Additional Protocol to ETS 108 (ETS 181)	08.11.2001	09.06.2004	14.02.2005	01.06.2005
Convention on Mutual Administrative Assistance in Tax Matters (ETS 127)	25.01.1988	-	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08.11.1990	04.04.2000	31.10.2001	01.02.2002
Criminal Law Convention on Corruption (ETS 173)	27.01.1999	27.01.1999	19.07.2001	01.07.2002
- Additional Protocol to ETS 173 (ETS 191)	15.05.2003	15.05.2003	15.11.2004	01.03.2005
Civil Law Convention on Corruption (ETS 174)	04.11.1999	04.01.2000	21.09.2000	01.11.2003
Convention on Cybercrime (ETS 185)	23.11.2001	23.11.2001	20.06.2002	01.07.2004
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	20.12.1988 - 20.12.1989	-	27.07.2001a	-
UN Convention against Transnational Organised Crime	12.12.2000 - 12.12.2002	12.12.2000	21.08.2002	-
- Protocol on Trafficking in Persons	12.12.2000 - 12.12.2002	12.12.2000	21.08.2002	-
- Protocol against the Smuggling of Migrants	12.12.2000 - 12.12.2002	12.12.2000	21.08.2002	-
- Protocol on Trafficking in Firearms	02.07.2001 - 2.12.2002	-	08.02.2008	-



**(2) BOSNIA AND HERZEGOVINA**

<b>Status of relevant international instruments</b>	<b>Opening for signature</b>	<b>Signature</b>	<b>Ratification or accession</b>	<b>Entry into Force</b>
European Convention on Extradition (ETS 024)	13.12.1957	30.04.2004	25.04.2005	24.07.2005
- Additional Protocol to ETS 024 (ETS 086)	15.10.1975	30.04.2004	25.04.2005	24.07.2005
- Second Additional Protocol to ETS 024 (ETS 098)	17.03.1978	30.04.2004	25.04.2005	24.07.2005
European Convention on Mutual Assistance in Criminal Matters (ETS 030)	20.04.1959	30.04.2004	25.04.2005	24.07.2005
- Additional Protocol to ETS 030 (ETS 099)	17.03.1978			
- Second Additional Protocol to the ETS 030 (ETS 182)	08.11.2001	17.05.2006	07.11.2007	01.03.2008
European Convention on the International Validity of Criminal Judgments (ETS 070)	28.05.1970	-	-	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073)	15.05.1972	30.04.2004	25.04.2005	26.07.2005
Convention on the Transfer of Sentenced Persons (ETS 112)	21.03.1983	30.04.2004	15.04.2005	01.08.2005
- Additional Protocol to ETS 112 (ETS 167)	18.12.1997			
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108)	28.01.1981	02.03.2004	31.03.2006	01.07.2006
- Additional Protocol to ETS 108 (ETS 181)	08.11.2001	02.03.2004	31.03.2006	01.07.2006
Convention on Mutual Administrative Assistance in Tax Matters (ETS 127)	25.01.1988	-	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08.11.1990	30/3/2004	30/3/2004	1/7/2004
Criminal Law Convention on Corruption (ETS 173)	27.01.1999	01.03.2000	30.01.2002	01.07.2002
- Additional Protocol to ETS 173 (ETS 191)	15.05.2003	01.03.2000	30.01.2002	01.11.2003
Civil Law Convention on Corruption (ETS 174)	04.11.1999	01.03.2000	30.01.2002	01.11.2003
Convention on Cybercrime (ETS 185)	23.11.2001	09.02.2005	19.05.2006	01.09.2006
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	20.12.1988 - 20.12.1989	-	01.09.1993	-
UN Convention against Transnational Organised Crime	12.12.2000 - 12.12.2002	12.12.2000	24.04.2002	-
- Protocol on Trafficking in Persons	12.12.2000 - 12.12.2002	12.12.2000	24.04.2002	-
- Protocol against the Smuggling of Migrants	12.12.2000 - 12.12.2002	12.12.2000	24.04.2002	-
- Protocol on Trafficking in Firearms	02.07.2001 - 2.12.2002	-	01.04.2008	-

**(3) CROATIA**

<b>Status of relevant international instruments</b>	<b>Opening for signature</b>	<b>Signature</b>	<b>Ratification or accession</b>	<b>Entry into Force</b>
European Convention on Extradition (ETS 024)	13.12.1957	-	25.01.1995 a	25.04.1995
- Additional Protocol to ETS 024 (ETS 086)	15.10.1975	-	25.01.1995 a	25.04.1995
- Second Additional Protocol to ETS 024 (ETS 098)	17.03.1978	-	25.01.1995 a	25.04.1995
European Convention on Mutual Assistance in Criminal Matters (ETS 030)	20.04.1959	07.05.1999	07.05.1999	05.08.1999
- Additional Protocol to ETS 030 (ETS 099)	17.03.1978	15.09.1999	15.09.1999	14.12.1999
- Second Additional Protocol to the ETS 030 (ETS 182)	08.11.2001	15.09.1999	15.09.1999	14.12.1999
European Convention on the International Validity of Criminal Judgments (ETS 070)	28.05.1970	-	-	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073)	15.05.1972	23.06.2003	-	-
Convention on the Transfer of Sentenced Persons (ETS 112)	21.03.1983	25.01.1995 a	25.01.1995	01.05.1995
- Additional Protocol to ETS 112 (ETS 167)	18.12.1997	29.04.2008	10.10.2008	01.02.2009
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108)	28.01.1981	05.06.2003	21.06.2005	01.10.2005
- Additional Protocol to ETS 108 (ETS 181)	08.11.2001	05.06.2003	21.06.2005	01.10.2005
Convention on Mutual Administrative Assistance in Tax Matters (ETS 127)	25.01.1988	-	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08.11.1990	06.11.1996	11.10.1997	01.02.1998
Criminal Law Convention on Corruption (ETS 173)	27.01.1999	15.09.1999	08.11.2000	01.07.2002
- Additional Protocol to ETS 173 (ETS 191)	15.05.2003	17.09.2003	10.05.2005	01.09.2005
Civil Law Convention on Corruption (ETS 174)	04.11.1999	02.10.2001	05.06.2003	01.11.2003
Convention on Cybercrime (ETS 185)	23.11.2001	23.11.2001	17.10.2002	01.07.2004
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	20.12.1988 - 20.12.1989	-	26.07.1993	-
UN Convention against Transnational Organised Crime	12.12.2000 - 12.12.2002	12.12.2000	24.01.2003	-
- Protocol on Trafficking in Persons	12.12.2000 - 12.12.2002	12.12.2000	24.01.2003	-
- Protocol against the Smuggling of Migrants	12.12.2000 - 12.12.2002	12.12.2000	24.01.2003	
- Protocol on Trafficking in Firearms	02.07.2001 - 2.12.2002	-	07.02.2005	-

**(4) KOSOVO**

<b>Status of relevant international instruments</b>	<b>Opening for signature</b>	<b>Signature</b>	<b>Ratification or accession</b>	<b>Entry into Force</b>
European Convention on Extradition (ETS 024)	13.12.1957			
- Additional Protocol to ETS 024 (ETS 086)	15.10.1975			
- Second Additional Protocol to ETS 024 (ETS 098)	17.03.1978			
European Convention on Mutual Assistance in Criminal Matters (ETS 030)	20.04.1959			
- Additional Protocol to ETS 030 (ETS 099)	17.03.1978			
- Second Additional Protocol to the ETS 030 (ETS 182)	08.11.2001			
European Convention on the International Validity of Criminal Judgments (ETS 070)	28.05.1970			
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073)	15.05.1972			
Convention on the Transfer of Sentenced Persons (ETS 112)	21.03.1983			
- Additional Protocol to ETS 112 (ETS 167)	18.12.1997			
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108)	28.01.1981			
- Additional Protocol to ETS 108 (ETS 181)	08.11.2001			
Convention on Mutual Administrative Assistance in Tax Matters (ETS 127)	25.01.1988			
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08.11.1990			
Criminal Law Convention on Corruption (ETS 173)	27.01.1999			
- Additional Protocol to ETS 173 (ETS 191)	15.05.2003			
Civil Law Convention on Corruption (ETS 174)	04.11.1999			
Convention on Cybercrime (ETS 185)	23.11.2001			
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	20.12.1988 - 20.12.1989			
UN Convention against Transnational Organised Crime	12.12.2000 - 12.12.2002			
- Protocol on Trafficking in Persons	12.12.2000 - 12.12.2002			
- Protocol against the Smuggling of Migrants	12.12.2000 - 12.12.2002			
- Protocol on Trafficking in Firearms	02.07.2001 - 2.12.2002			

**(5) MONTENEGRO**

<b>Status of relevant international instruments</b>	<b>Opening for signature</b>	<b>Signature</b>	<b>Ratification or accession</b>	<b>Entry into Force</b>
European Convention on Extradition (ETS 024)	13.12.1957	-	30.09.2002	06.06.2006
- Additional Protocol to ETS 024 (ETS 086)	15.10.1975	-	23.06.2003	21.09.2003
- Second Additional Protocol to ETS 024 (ETS 098)	17.03.1978	-	23.06.2003	21.09.2003
European Convention on Mutual Assistance in Criminal Matters (ETS 030)	20.04.1959	-	30.09.2002	06.06.2006
- Additional Protocol to ETS 030 (ETS 099)	17.03.1978	-	23.06.2003	06.06.2006
- Second Additional Protocol to the ETS 030 (ETS 182)	08.11.2001	07.04.2005	20.10.2008	01.02.2009
European Convention on the International Validity of Criminal Judgments (ETS 070)	28.05.1970	08.03.2010	19.03.2010	20.06.2010
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073)	15.05.1972	-	30.09.2002	06.06.2006
Convention on the Transfer of Sentenced Persons (ETS 112)	21.03.1983	-	11.04.2002	06.06.2006
- Additional Protocol to ETS 112 (ETS 167)	18.12.1997	-	30.09.2002	06.06.2006
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108)	28.01.1981	06.09.2005	06.09.2005	06.06.2006
- Additional Protocol to ETS 108 (ETS 181)	08.11.2001	24.02.2009	03.03.2010	01.07.2010
Convention on Mutual Administrative Assistance in Tax Matters (ETS 127)	25.01.1988	-	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08.11.1990	09.10.2003	09.10.2003	06.06.2006
Criminal Law Convention on Corruption (ETS 173)	27.01.1999	-	18.12.2002	06.06.2006
- Additional Protocol to ETS 173 (ETS 191)	15.05.2003	20.02.2008	17.03.2008	01.07.2008
Civil Law Convention on Corruption (ETS 174)	04.11.1999	07.04.2005	28.01.2008	01.05.2008
Convention on Cybercrime (ETS 185)	23.11.2001	07.04.2005	03.03.2010	01.07.2010
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	20.12.1988 - 20.12.1989	-	23.10.2006	-
UN Convention against Transnational Organised Crime	12.12.2000 - 12.12.2002	-	23.10.2006	-
- Protocol on Trafficking in Persons	12.12.2000 - 12.12.2002	-	23.10.2006	-
- Protocol against the Smuggling of Migrants	12.12.2000 - 12.12.2002	-	23.10.2006	-
- Protocol on Trafficking in Firearms	02.07.2001 - 2.12.2002	-	23.10.2006	-

**(6) SERBIA**

<b>Status of relevant international instruments</b>	<b>Opening for signature</b>	<b>Signature</b>	<b>Ratification or accession</b>	<b>Entry into Force</b>
European Convention on Extradition (ETS 024)	13.12.1957	-	30.09.2002	29.12.2002
- Additional Protocol to ETS 024 (ETS 086)	15.10.1975	-	23.06.2003	21.09.2003
- Second Additional Protocol to ETS 024 (ETS 098)	17.03.1978	-	23.06.2003	21.09.2003
European Convention on Mutual Assistance in Criminal Matters (ETS 030)	20.04.1959	-	30.09.2002	29.12.2002
- Additional Protocol to ETS 030 (ETS 099)	17.03.1978	-	23.06.2003	21.09.2003
- Second Additional Protocol to the ETS 030 (ETS 182)	08.11.2001	07.04.2005	26.04.2007	01.08.2007
European Convention on the International Validity of Criminal Judgments (ETS 070)	28.05.1970	26.04.2007	26.04.2007	27.07.2007
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073)	15.05.1972	-	30.09.2002	31.12.2002
Convention on the Transfer of Sentenced Persons (ETS 112)	21.03.1983	-	11.04.2002	01.08.2002
- Additional Protocol to ETS 112 (ETS 167)	18.12.1997		30.09.2002	01.01.2003
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108)	28.01.1981	06.09.2005	06.09.2005	01.01.2006
- Additional Protocol to ETS 108 (ETS 181)	08.11.2001	02.07.2008	08.12.2008	01.04.2009
Convention on Mutual Administrative Assistance in Tax Matters (ETS 127)	25.01.1988	-	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08.11.1990	09.10.2003	09.10.2003	01.02.2004
Criminal Law Convention on Corruption (ETS 173)	27.01.1999	-	18.12.2002	01.04.2003
- Additional Protocol to ETS 173 (ETS 191)	15.05.2003	09.01.2008	09.01.2008	01.05.2008
Civil Law Convention on Corruption (ETS 174)	04.11.1999	07.04.2005	09.01.2008	01.05.2008
Convention on Cybercrime (ETS 185)	23.11.2001	07.04.2005	14.04.2009	01.08.2009
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	20.12.1988 - 20.12.1989	-	12.03.2001	-
UN Convention against Transnational Organised Crime	12.12.2000 - 12.12.2002	12.12.2000	06.09.2001	-
- Protocol on Trafficking in Persons	12.12.2000 - 12.12.2002	12.12.2000	06.09.2001	-
- Protocol against the Smuggling of Migrants	12.12.2000 - 12.12.2002	12.12.2000	06.09.2001	-
- Protocol on Trafficking in Firearms	02.07.2001 - 2.12.2002	-	20.12.2005	-

## (7) "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"

Status of relevant international instruments	Opening for signature	Signature	Ratification or accession	Entry into Force
European Convention on Extradition (ETS 024)	13.12.1957	28.07.1999	28.07.1999	26.10.1999
- Additional Protocol to ETS 024 (ETS 086)	15.10.1975	28.07.1999	28.07.1999	26.10.1999
- Second Additional Protocol to ETS 024 (ETS 098)	17.03.1978	28.07.1999	28.07.1999	26.10.1999
European Convention on Mutual Assistance in Criminal Matters (ETS 030)	20.04.1959	28.07.1999	28.07.1999	26.10.1999
- Additional Protocol to ETS 030 (ETS 099)	17.03.1978	28.07.1999	28.07.1999	26.10.1999
- Second Additional Protocol to the ETS 030 (ETS 182)	08.11.2001	08.11.2001	16.12.2008	01.04.2009
European Convention on the International Validity of Criminal Judgments (ETS 070)	28.05.1970	-	-	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 073)	15.05.1972	08.11.2001	29.11.2004	2005
Convention on the Transfer of Sentenced Persons (ETS 112)	21.03.1983	28.07.1999	28.07.1999	01.11.1999
- Additional Protocol to ETS 112 (ETS 167)	18.12.1997	28.07.1999	28.07.1999	01.06.2000
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108)	28.01.1981	24.03.2006	24.03.2006	01.07.2006
- Additional Protocol to ETS 108 (ETS 181)	08.11.2001	04.01.2008	26.09.2008	01.01.2009
Convention on Mutual Administrative Assistance in Tax Matters (ETS 127)	25.01.1988	-	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	08.11.1990	14.12.1999	19.05.2000	01.09.2000
Criminal Law Convention on Corruption (ETS 173)	27.01.1999	28.07.1999	28.07.1999	01.07.2002
- Additional Protocol to ETS 173 (ETS 191)	15.05.2003	15.05.2003	14.11.2005	01.03.2006
Civil Law Convention on Corruption (ETS 174)	04.11.1999	08.06.2000	29.11.2002	01.11.2003
Convention on Cybercrime (ETS 185)	23.11.2001	23.11.2001	15.09.2004	01.01.2005
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	20.12.1988 - 20.12.1989	-	13.10.1993	-
UN Convention against Transnational Organised Crime	12.12.2000 - 12.12.2002	12.12.2000	12.01.2005	-
- Protocol on Trafficking in Persons	12.12.2000 - 12.12.2002	12.12.2000	12.01.2005	-
- Protocol against the Smuggling of Migrants	12.12.2000 - 12.12.2002	12.12.2000	12.01.2005	-
- Protocol on Trafficking in Firearms	02.07.2001 - 2.12.2002	-	14.09.2007	-

### 3.1.2 Bilateral agreements on extradition, mutual legal assistance, transfer of sentenced persons

#### (1) ALBANIA

- **Bosnia-Herzegovina:** Agreement on extradition (1928)
- **Croatia:** Agreement on extradition (22.06.1926)
- **Romania:** Agreement on legal assistance in civil, family and criminal matters (1961)
- **Slovenia:** Agreement between Slovenia and Albania on extradition (1926)
- **“The former Yugoslav Republic of Macedonia”:** Agreement on extradition (1998)
- **“The former Yugoslav Republic of Macedonia”:** Agreement on mutual legal assistance on criminal and civil law (1998)

#### (2) BOSNIA AND HERZEGOVINA

- **Albania:** Agreement on extradition (1928)
- **Bulgaria:** Treaty on mutual legal assistance (26.01.1957)
- **Croatia:** Treaty on legal assistance in civil and criminal matters (26.02.1996)
- **Croatia:** Treaty on the transfer of sentenced persons (26.02.1996)
- **Hungary:** Treaty on mutual legal assistance (Law Decree No. 1 of 1969, modified by No. 1 of 1988)
- **Montenegro:** Treaty on mutual legal assistance in civil and criminal matters (Sl. gl. BiH 11/2005)
- **Romania :** Treaty between Romania and the Socialist Federal Republic of Yugoslavia on legal assistance (Belgrade, 18.10.1960) and its additional protocol (21.01.1972)
- **Serbia:** Treaty on mutual legal assistance in civil and criminal matters (Sl. gl. BiH 11/2005),
- **Slovenia:** Treaty on extradition (12/2005)
- **Slovenia:** Treaty on mutual legal assistance (signed on April 6th, 2002, not yet in force)
- **“The former Yugoslav Republic of Macedonia”:** Treaty on extradition (14/2006)
- **“The former Yugoslav Republic of Macedonia”:** Treaty on legal assistance in civil and criminal matters (16/2006)

#### (3) CROATIA

- **Albania:** Agreement on Extradition (22.06.1926)
- **Bosnia and Herzegovina:** Treaty on legal assistance on civil and criminal matters (26.02.1996)
- **Bosnia and Herzegovina:** Treaty on the transfer of sentenced persons (26.02.1996)
- **Bulgaria:** Treaty on mutual legal assistance (23.03.1956)
- **Hungary:** Treaty on mutual legal assistance (07.03.1968, amended 25.04.1986)
- **Romania:** Treaty on legal assistance (18.10.1960, additional protocol of 21.01.1972)
- **Serbia and Montenegro:** Treaty on legal assistance on civil and criminal matters (15.09.1997)
- **Serbia and Montenegro:** Treaty on the extradition and acceptance of persons who enter or reside illegally on the state territory (17.06.2004),
- **Slovenia:** Treaty on legal assistance in civil and criminal matters (07.02.1994)
- **Slovenia:** Treaty on the extradition and acceptance of persons who enter or reside illegally (01.07.2006)
- **Slovenia:** Treaty on the transfer of sentenced persons (07.02.1994).
- **“The former Yugoslav Republic of Macedonia”:** Treaty on legal assistance on civil and criminal matters (02.09.1994)
- **“The former Yugoslav Republic of Macedonia”:** Treaty on the transfer of sentenced persons (02.09.1984)

#### (4) KOSOVO

None.

## (5) MONTENEGRO

- **Albania:** Treaty between the Kingdom of Slovenians, Croats and Serbs and the National Republic of Albania on extradition of convicted persons (22.06.1926 entered into force on 17.05.1929)
- **Bosnia and Herzegovina:** Treaty on legal assistance in civil and criminal matters (24.02.2005, entered into force on 8.07.2005)
- **Bulgaria :** Treaty between the Federal National Republic of Yugoslavia and the National Republic of Bulgaria on mutual legal assistance (23.03.1956, entered into force 17.01.1957)
- **Croatia:** Treaty between SFRY and Republic of Croatia on legal assistance in civil and criminal matters (15.09.1979, entered into force on 15.03.1998)
- **Hungary:** Treaty between the Socialist Federal Republic of Yugoslavia and Hungary on mutual legal assistance (07.03.1968, entered into force on 18.01.1969)
- **Romania:** Treaty between the Socialist Federal Republic of Yugoslavia and the Republic of Romania on mutual legal assistance (18.10.1960, entered into force on 01.10.1961)
- **Serbia:** Treaty on legal assistance in civil and criminal matters (29.05.2009 entered into force on 29.05.2009)
- **“The former Yugoslav Republic of Macedonia”:** Treaty on legal assistance in civil and criminal matters (06.07.2004, entered into force on 31.12.2004)

## (6) SERBIA

- **Albania:** Treaty on extradition of convicted persons (17.05.1929)
- **Bosnia and Herzegovina:** Treaty on Legal Aid in Civil and Criminal Matters (09.02.2006)
- **Bulgaria :** Treaty on mutual legal assistance (17.01.1957)
- **Croatia :** Treaty on legal assistance in civil and criminal matters (15.03.1998)
- **Hungary:** Treaty on mutual legal assistance in civil and criminal matters (18.01.1969)
- **Montenegro:** Treaty on extradition (29.05.2009)
- **Romania:** Treaty on mutual legal assistance (01.10.1961)
- **“The former Yugoslav Republic of Macedonia”:** Treaty on legal assistance in civil and criminal matters (09.03.2005)

## (7) “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

- **Albania:** Treaty on extradition (Official Gazette 16/96)
- **Albania:** Treaty on instituting criminal proceedings (Official Gazette 24/96)
- **Albania:** Treaty on mutual legal assistance in criminal matters (Official Gazette 16/98)
- **Bosnia and Herzegovina:** Treaty on extradition (Official Gazette 59/06)
- **Bosnia and Herzegovina:** Treaty on legal assistance in civil and criminal matters (Official Gazette 10/06)
- **Croatia :** Treaty on instituting criminal proceedings (Official Gazette 19/95)
- **Croatia :** Treaty on mutual legal assistance in criminal matters (Official Gazette 19/95)
- **Montenegro:** Treaty on legal assistance in civil and criminal matters (06.07.2004, entered into force on 31.12.2004)
- **Serbia:** Treaty on legal assistance in civil and criminal matters (Official Gazette 77/04)
- **Slovenia:** Treaty on instituting criminal proceedings (Official Gazette 24/96)
- **Slovenia:** Treaty on mutual legal assistance in criminal matters (Official Gazette 24/96)
- **Slovenia:** Treaty on the transfer of sentenced persons (Official Gazette 24/96)



## 3.2 APPENDIX 2: EXTRACTS FROM NATIONAL LEGISLATION

### (1) ALBANIA

**CONSTITUTION OF THE REPUBLIC OF ALBANIA** (approved by the Albanian Parliament on 21 October 1998)

#### **Article 122**

1. Any international agreement that has been ratified constitutes part of the internal juridical system after it is published in the Official Journal of the Republic of Albania. It is implemented directly, except for cases when it is not self-executing and its implementation requires issuance of a law. The amendment, supplementing and repeal of laws approved by the majority of all members of the Assembly, for the effect of ratifying an international agreement, is done with the same majority.
2. An international agreement that has been ratified by law has superiority over laws of the country that are not compatible with it.
3. The norms issued by an international organization have superiority, in case of conflict, over the laws of the country if the agreement ratified by the Republic of Albania for its participation in the organization expressly contemplates their direct applicability.

**CRIMINAL CODE OF THE REPUBLIC OF ALBANIA** (People's Assembly Law No. 7895, dated 27 January 1995 as amended by the Law no 10 023, dated 27.11.2008 "On some addenda and amendments to Law no.7895)

#### **Article 6 - The applicable law on criminal acts committed by Albanian citizens**

As concerning criminal acts committed by Albanian citizens within the territory of the Republic of Albania, the criminal law of the Republic of Albania shall apply.

The criminal law of the Republic of Albania shall also be applicable to the Albanian citizen who commits an offence within the territory of another country<sup>4</sup>, when that offence is concurrently punishable, unless a foreign court has given a final sentence.

In the sense of this article, Albanian citizens shall also be considered those persons who apart from the Albanian citizenship hold another one too.

#### **Article 7 - The applicable law on criminal acts committed by foreign citizens**

The foreign citizen who commits a criminal act within the territory of the Republic of Albania is held responsible on the basis of the criminal law of the Republic of Albania.

The criminal law of the Republic of Albania is also applicable to a foreign citizen who, outside of the Republic of Albania, commits one of the following offences against the interests of the Albanian State or an Albanian citizen:

- a) crimes against humanity;
- b) crimes against Albanian independence and its constitutional order;
- c) terrorism;
- d) organization of prostitution, illegal manufacturing and trafficking of drugs, other narcotic substances, weapons, nuclear substances, as well as pornographic materials;
- e) hijacking airplanes or ships;
- f) falsifying the Albanian state seal, Albanian currency, or Albanian bonds or stocks;
- g) crimes which affect the life or health of Albanian citizens, to which the law provides for a punishment by imprisonment of five years or any other heavier punishment.

#### **Article 10 - Validity of criminal sentences of foreign courts**

Unless otherwise provided for by bilateral or multilateral treaties, the criminal sentences of foreign courts on Albanian citizens who plead guilty of committing a criminal act are valid in Albania within the limits of the Albanian law, also on the following merits:

- a) for the effect of qualifying as recidivist the person who has committed the criminal act;
- b) to execute sentences comprising additional punishment;
- c) for implementing security measures;<sup>5</sup>
- d) for compensation of damages or other civil law effects.

<sup>4</sup> *Shtet* in the Albanian original.

<sup>5</sup> *Masa të sigurimit* in the Albanian original.

#### **Article 11 - Extradition**

Extradition may be granted<sup>6</sup> only when explicitly provided for by international treaties where the Republic of Albania is a party.

Extradition shall be granted when both Albanian law and foreign law provide for the criminal act, which constitutes the object of the request for extradition, as such simultaneously.

Extradition shall not be granted:

- a) if the person to be extradited is an Albanian citizen, unless otherwise provided for by the treaty;
- b) if the criminal act constituting the object of the request for extradition is of a political or military nature;
- c) when there is reasonable ground to believe that the person requested to be extradited will be persecuted, punished or wanted<sup>7</sup> because of his political, religious, national, racial or ethnic beliefs;
- d) if the person requested to be extradited has been tried for the criminal act for which a competent Albanian court demands the extradition.

**CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA** (Decree n° 1059, dated 5 April 1995 of the President of the Republic of Albania, Sali Berisha as amended by Law n° 8460, dated 11.02.1999, Law n° 8813, dated 13.06.2002 and Law no. 10 054, dated 29.12.2008 "On some addenda and amendments to Law no. 7905, dated 21.3.1995)

#### **General Provisions**

##### **Article 10 - Application of international conventions**

The relations with foreign authorities in criminal matters shall be governed by international conventions recognized by the Albanian government, by generally admitted principles and standards of international public law and also by the provisions of this code.

#### **Title X – Jurisdictional relations with foreign authorities**

##### **Chapter I – Extradition**

##### **Section I – Extradition abroad**

##### **Article 488 - The significance of extradition**

The surrender of a person to a foreign country to execute a sentence by imprisonment or the delivery of an act which proves his proceedings for a criminal offence can be made only by means of extradition.

##### **Article 489 - The request for extradition**

1. The extradition is permitted only upon request submitted to the Minister of Justice.
2. The request is presented in diplomatic channel through the Ministry of Foreign Affairs.
3. The request for extradition are attached :
  - a) the copy of the sentenced by imprisonment or of the act of proceedings;
  - b) a report of the criminal offence in charge of the person subject to extradition indicating the time and the place of the commission of the offence and its legal qualification;
  - c) the text of legal provisions to be applied, indicating whether for the criminal offence subject to extradition the law of the foreign country provides death penalty.
  - d) personal data and nay other possible information which supports to define the identity and the citizenship of the person subject to extradition.
4. When several requests for extradition compete the Minister of Justice sets forth the order of examination. He takes into consideration all of the circumstances of the case and, particularly the date of the reception of the request, the importance and the place where the criminal offence is committed, the citizenship and the domicile of the person subject to request, as well as the possibility of a re-extradition by the requesting country.
5. In case for a sole offence the extradition is requested simultaneously by several countries it shall be provided to the country subject to the criminal offence or to the country within which territory has been committed the criminal offence.

##### **Article 490 - The requirements of extradition**

1. The extradition is permitted by expressed condition that the person subject to extradition shall not be prosecuted, shall be not sentenced nor shall he be surrendered to another country for a criminal offence which has occurred before the request for extradition and which differs from that which the extradition is provided for.
2. The requirements of the paragraph 1 shall be not considered when:
  - a) the extraditing party gives expressed consent that the extradited is prosecuted even for another criminal offence;

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<sup>6</sup> *Lejohet* (permitted) in the Albanian original.

<sup>7</sup> *Kërkohet* in the Albanian original.

- b) the extradited, although has been able, has not left the territory of the country he is extradited. After thirty days from his release or after has left is returned voluntarily.
- 3. The Minister of Justice, which permits the extradition, may impose even other requirements which he considers as appropriate.

**Article 491 - The rejection of the request for extradition**

- 1. The extradition may not be provided:
  - a) for an offence of a political nature or when it results that it is requested for political reasons.
  - b) when there are grounds to think that the person subject to extradition shall be subjected to persecution or discrimination due to race, religion, sex, citizenship, language, political belief, personal or social state or cruel, inhuman or degrading punishment or treatment or acts which constitute violation of fundamental human rights.
  - c) when the person subject to the request for extradition has committed a criminal offence in Albania.
  - d) when he is being tried or has been tried in Albania regardless of the criminal offence has been committed abroad.
  - e) when the criminal offence is not provided as such by the Albanian legislation;
  - f) the Albanian state has provided an amnesty for this offence;
  - g) when the requested person is an Albanian citizen and there is no agreement otherwise providing;
  - h) when the law of the requesting state does not provide the prosecution or the punishment for the same.

**Article 492 - The actions of the prosecutor**

- 1. When it receives a request for extradition from a foreign country, the Minister of Justice, if it does not reject it, shall send it along with the documents to the prosecutor in the competent court.
- 2. The prosecutor, after receiving the request, orders the appearance of the interested person in order to identify him and to obtain his eventual consent for the extradition. The interested person received an explanation of his right to be assisted by a defence lawyer.
- 3. The prosecutor, through the Minister of Justice, requests from the foreign authorities the documents and the information which he considers necessary.
- 4. Within three months from the date on which the request for extradition has arrived, the prosecutor submits the request to the court for examination.
- 5. The request of the prosecutor shall be deposited in the secretary of the court along with the acts and attached objects. The secretary shall take care of the notification of the person subject to extradition, his defence lawyer and the eventual representative of the requesting country who, within ten days, have the right to access to the documents and to issue copies of them as well as to examine the attached objects and to present memos.

**Article 493 - Coercive measures and the attachments**

- 1. Upon request of the Minister of Justice, presented through the prosecutor, the person subject to a request for extradition may be subjected to coercive measures and an order imposing the attachment of the real evidence and of the objects related to the criminal offence for which is requested the extradition may be issued.
- 2. The imposing of the coercive measures shall be subjected to the provisions of the title V of this Code, as far as this can be done, considering the requirements which provide that the person subject to extradition shall not try to slip the extradition.
- 3. The coercive measures and the attachment shall be not imposed when there are reasons to believe that the requirements to provide a decision in favour of extradition do not exist.
- 4. The coercive measures are revoked if within three months from the beginning of their execution, the proceedings before the court have not been terminated. Upon request of the prosecutor, the time limit can be prolonged, but not longer than one month, when it is necessary to make particularly complex verifications.
- 5. The competent authority to render a decision on the basis of the paragraphs herein is the district court or, during the proceedings before the court of appeal, the latter.

**Article 494 - Temporary execution of coercive measures**

- 1. Upon request of a foreign country, presented by the Minister of Justice through the prosecutor in the competent court, the court may impose temporarily a coercive measure before the request for extradition arrives.
- 2. The measure may be imposed when:
  - a) the foreign country has declared that the person has been subjected to a measure restricting his personal freedom or to a sentence by imprisonment and that it is going to present a request for extradition;
  - b) the foreign country has presented circumstantial data regarding the criminal offence and sufficient elements for the identification of the person;
  - c) there is the eventual event of his escape.

3. The competency to impose the measure shall belong to, respectively, the court of the district where in which territory the person has the domicile, residence or the dwelling- house or the court of the district where he is.
4. In case the competency cannot be determined by the above ways, the court of Tirana district shall be competent.
5. The court may also order the attachment of the real evidence and of the objects pertaining to the criminal offence.
6. The Minister of Justice gives notice to the foreign country of the temporary coercive measure and of the eventual attachment.
7. The coercive measures are revoked if, within thirty days from the notification herein of, the request for extradition and the documents enclosed do not arrive to the Ministry of Justice.

**Article 495 - The arrest by the judicial police** (point 1 and 2 amended by the law no 8813, on 13.06.2002)

1. In case of urgency, the judicial police may carry out the arrest of the person who is subject to request for temporary arrest. It also carries out the attachment of the real evidence of the criminal offence and of the objects connected with it.
2. The authority which has carried the arrest out shall immediately inform the prosecutor and the Minister of Justice. The prosecutor, within forty-eight hours, shall make the arrested available to the court of the territory where the arrest has taken place, sending also the relevant documents.
3. The court, within forty-eight hours from the arrest, approves it if there are the requirements or orders the release of the arrested. The decision rendered by the court shall be communicated to the Minister of Justice Albania
4. The arrest shall be revoked in case the Minister of Justice does not request, within ten days from the approval, its continuance.
5. The copy of the decision rendered by the court regarding the coercive measures and attachments, in accordance with these articles, shall be notified to the prosecutor, interested person and his defence lawyers who may appeal to the court of appeal.

**Article 496 - The hearing of the person subjected to the precautionary measure**

1. In case a precautionary measure is imposed, the court, as soon as possible and anyway not later than five days after the execution of the measure or its evaluation, makes sure of the identity of the person and takes its eventual consent for extradition, noting this in the minutes.
2. The court makes known to the interested person the right to a defence lawyer and, ex- officio, if he is absent, can appoint another defence lawyer. The defence lawyer must be notified, at least twenty-four hours before for the above mentioned actions and has the right to participate in them.

**Article 497 - The examination of the request for extradition**

1. After the reception of the request of the prosecutor, the court fixes the hearing and notifies, at least ten days in advance, the prosecutor, the person subject to request for extradition, his defence lawyer and the eventual representative of the requesting state.
2. The court collects data and makes the necessary verifications and hears the persons summoned to appear before the trial.

**Article 498 - The decision of the court**

1. The court renders the decision in favour of the extradition when it possesses important data on the guilt or when there is a final decision. In this case, when there is a request of the Minister of Justice, presented through the prosecutor, the court decides the holding into custody of the person who should be extradited and who is in free state, as well as the attachment of the real evidence and objects which belong to the criminal offence.
2. The court renders the decision rejecting the extradition in cases provided for the non-acceptance of the request for extradition.
3. When the court renders the decision against extradition, the extradition cannot be executed.
4. The decision against the extradition prohibits the rendering of a successive decision in the favour of extradition as a result of a new request presented for the same facts by the same state, except when the request is based on elements which are not evaluated by the court.
5. The decision of extradition regarding the request for extradition, may be appealed to the court of appeal by the interested person, his defence lawyer, the prosecutor and the representative of the requesting state, according to the general rules of appeal.

**Article 499 - The decision of extradition**

1. The Minister of Justice decides for the extradition within thirty days from the date the decision of the court has become final. After the expiration of this time-limit, even in case the decision is not rendered by the Minister, the person subject to extradition, if imprisoned, shall be released.
2. The person shall be released even in case the request for extradition is rejected.
3. The Minister of Justice communicates the decision to the requesting state and, when this is favourable, the place of the surrender and the date by which it is expected to start. The time-limit of the surrender is

fifteen days from the fixed date and, upon motivated request of the requesting state, it may be also extended to twenty other days.

4. The decision of extradition shall lose its effect and the extradited shall be released in case the requesting state does not act, within the fixed time-limit, to receive the extradited.

#### **Article 500 - The suspension of the surrender**

1. The execution of extradition is suspended when the extradited should be tried in the territory of Albanian state and must serve a punishment for criminal offences committed before or after that subject to extradition. But the Minister of Justice, after listening the competent proceeding authority of the Albanian state or the one of the execution of sentence, must order the temporary surrender in the requesting state of the person subject to extradition, defining the time-limits and the way how to operate.
2. The Minister may agree the rest of the punishment to be served in the requesting state.

#### **Article 501 - Extension of the provided extradition and the re-extradition**

1. In case of new request for extradition, submitted after the delivery of the extradited and which subject is a criminal offence occurred before the delivery, different from that subject to the provided extradition, there are respected, as far as they are applicable, the provisions of this chapter. The request must be attached to the statements of the extradited, made before the judge of the state requesting the extension of the extradition.
2. The court proceeds in absentia of the extradited.
3. It shall not be any trial in case the extradited, by his statements provided in paragraph 1, has accepted the extension of extradition.
4. The above provisions are also applied in case the requesting state, which is surrendered the person, requests the consent for extradition of the same person in another state.

#### **Article 502 - The transit**

1. The transit through the territory of the Albanian state of an extradited person from a state to another, is authorised, upon request of the latter, by the Minister of Justice, if the transfer does not impair the sovereignty, the security or other state interests.
2. The transfer is not authorized :
  - a) when the extradition is provided for facts which are not provided as criminal offences by the Albanian law;
  - b) in cases provided by article 491, paragraph 1;
  - c) when an Albanian citizen, for whom the extradition in the state which has requested the transit transfer should not have been provided, is involved.
3. The authorization is not required in case the transit transfer is made by plain and there is not expected the landing in the Albanian territory. But, when the landing takes place, there shall apply, as far they are in accordance with the fact, the provisions for the precautionary measures.

### **Section II - The extradition abroad**

#### **Article 504 - The request for extradition**

1. The Minister of Justice is competent to request from a foreign state the extradition of the proceeded or sentenced person, who must be subjected to a measure that restricts the individual freedom. In this case, the prosecutor in the court of the territory where the proceedings take place or the sentence is rendered, makes a request to the Minister of Justice, sending the necessary acts and documents. In case does not accept the request, the Minister notifies the authority which has made it.
2. The Minister of Justice is competent to decide about the conditions eventually imposed by the foreign country to provide the extradition, when they do not run against the main principles of the Albanian rule of law. The proceeding authority is obliged to respect the accepted conditions.
3. The Minister of Justice may decide, for the purpose of extradition, the searching abroad for the proceeded or sentenced person and his temporary arrest.
4. The detention abroad, as a consequence of a request for extradition introduced by the Albanian state, is calculated in the duration of the detention, according to the rules provided in title V of this Code.

**CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA** (Decree n° 1059, dated 5 April 1995 of the President of the Republic of Albania, Sali Berisha as amended by Law n° 8460, dated 11.02.1999 and Law n° 8813, dated 13.06.2002)

## **CHAPTER II - INTERNATIONAL LETTERS OF APPLICATION**

### **Section I. Foreign letters of application**

#### **Article 505 - The competences of the Minister of Justice**

1. The Minister of Justice decides to grant support to a letter of application of a foreign authority regarding communications, notifications and the taking of proofs, except when evaluates that the requested actions impair the sovereignty, the security and important interests of the state.

2. The Minister does not grant support to the letter of application when it is certain that the requested actions are prohibited expressly by law or contradict the fundamental principles of the Albanian rule of law. The Minister does not grant support to the letter of application when there are motivated reasons to think that the considerations regarding race, religion, sex, nationality, language, political beliefs or the social state may cause a negative influence to the performance of the process, and when it is certain that the defendant has expressed freely his consent for the letter of application.
3. In cases the letter of application has as subject the summons of the witness, expert or a defendant before a foreign judicial authority, the Minister of Justice does not grant support to the letter of application when the requesting state does not give sufficient guarantee for the non-encroachment of the cited person.
4. The Minister has the right to not grant support to the letter of application in case the requesting state does not give the necessary guarantee of reciprocity.

#### **Article 506 - The court proceedings**

1. The foreign letter of application cannot be executed unless the court of the place where he must be proceeded has rendered a favourable decision rendered.
2. The district prosecutor, after taking the acts from the Minister of Justice, submits his request to the court.
3. The court disposes of the execution of the letter of application by a decision.
4. The execution of the letter of application is not accepted:
  - a) in cases the Minister of Justice does not grant support to the letter of application
  - b) when the fact for which the foreign authority proceeds is not provided as a criminal offence by the Albanian law.

#### **Article 507 - The execution of the letters of application**

1. The decision for the execution of the letter of application shall appoint the panel which must carry out the requested action.
2. For the performance of the requested actions the provisions of this Code shall apply, except in case the special rules requested by the foreign judicial authority, which are not in contrary with the principles of the Albanian rule of law, must be observed.

#### **Article 508 - The summons of witnesses who are requested by the foreign authority**

1. The citation of the witnesses, residing in the territory of the Albanian state, to appear before the foreign judicial authority, are sent to the prosecutor of respective district, who takes measures for the notification, acting as in case of notification of the defendant in free condition.

### **Section II. Letters of application from abroad**

#### **Article 509 - The sending of letters of application to foreign authorities**

1. The letters of application of the courts and prosecution offices, addressed to foreign authorities for notification and the taking of the proofs, shall be sent to the Minister of Justice who takes the measures to send them through diplomatic channel.
2. When ascertains that the security or other important interests of the state could be in danger the Minister, within thirty days from the reception of the letter of application, decides to give it up.
3. The Minister communicates to the proceeding authority that has presented the request, the date of its reception and the notification that he has sent the letter of application or the order to give up the procedure in relation to the letter.
4. In case of urgency the proceeding authority may order the sending of the letter of application through diplomatic channel informing the Minister of Justice.

#### **Article 510 - The non-encroachment of the summoned person**

1. The person summoned on basis of the letter of application, when appears, may not be subjected to restrictions of personal freedom due to facts occurred before the writ of summons.
2. The non-encroachment provided by paragraph 1 shall cease when the witness, the expert or the defendant, even having the possibility, has not left the territory of the Albanian state, after the expiration of fifteen days from the moment his presence is no longer requested by the judicial authority or when, after has left, he has come back voluntarily.

#### **Article 511 - The value of the acts received by letter of application**

1. When the foreign country has imposed conditions for the usage of the requested acts, the Albanian proceeding authority must respect them in case they do not run against the prohibitions provided by law.

## **CHAPTER III - THE MEANS OF SEARCHING FOR EVIDENCE**

### **Section II – Inspections**

#### **Article 204 - Inspection of the person**

1. Before the completion of inspection of the person, the one to be inspected shall be handed a copy of inspection order, making known the right to ask for the presence of a reliant person, provided that he is found immediately and is appropriate.
2. The inspection is made by respecting the dignity and the defence of the one under inspection.

#### **Article 205 - Inspection of spots**

1. The defendant, when present, and the one who has the place available shall be handed the copy of inspection order explaining the right to ask for the presence of a reliant person.
2. When the persons indicated in the paragraph 1 are absent, the copy of the order is handed to a relative, a neighbour or a person who works with him.
3. The proceeding authority may inspect present persons when it considers that they may hide real evidence or objects belonging to the criminal offence. It may order that the present persons shall not leave before the completion of inspection and the getting forcibly back of the ones who leave.

#### **Article 206 - The timing for house inspection**

1. The inspection in a dwelling house or in a closed place near it may not start before 7 a.m. and after 20 p.m. In case of urgency the proceeding authority may, by written order, decide that the inspection is made exceeding such time-limits.

#### **Article 207 - Sequestration during inspection**

1. The objects which are found during the inspection may be sequestered in compliance with provisions on sequestration.

### **Section III – Attachment**

#### **Article 208 - The scope of sequestration**

1. The judge or the prosecutor are entitled to order, by motivated writ, the attachment of real evidence and objects connected with the criminal offence, when they are indispensable to reveal the facts.
2. The attachment is carried on by the one who has issued the writ or by the officers of the judicial police being authorised by the same writ.
3. The copy of the writ of attachment is handed to the interested person, if present.

#### **Article 209 - Sequestration of correspondence**

1. When the court has grounded reasons to think that in the telegraphic or mail service offices there are letters, envelopes, boxes, telegrams and other objects of correspondence sent from or to the defendant, even under other name or through another person, it orders their sequestration.
2. When the sequestration is made by an officer of the judicial police he must hand to the judicial authority the sequestered objects of the correspondence without opening and without having got access to them by any other means.
3. The sequestered objects that are not part of correspondence which can be sequestered shall be given back to the person to whom they belong and may not be used.

#### **Article 210 - Attachment in the banks**

1. The court may order the attachment of bank documents, stock exchanges, sums deposited in current accounts and other when there are grounded reasons to think that they are connected to the criminal offence even when they do not belong to the defendant or are not in his name. In urgent cases this decision might be taken by the prosecutor.

### **Section IV – Interceptions of conversations or communications**

#### **Article 221 - Limits of permission** (point 1 amended and point 2 added by the law no 8813, on 13.06.2002)

1. The interception of conversations or telephone communication or other forms of telecommunication is permitted only when it is proceeded for:
  - a) intentional crimes punishable by imprisonment not less than five years maximum,
  - b) crimes connected with arms or explosive matters, narcotic substances and contraband,
  - c) criminal offences of insult and threat by phone call.
2. The interception, provided for in paragraph 1, is valid for all communicators.

#### **Article 222 - The decision permitting the interception** (added paragraph 1 and point 3 by the law no 8813, on 13.06.2002)

1. The court authorises the interception upon request of prosecutor or injured accuser, by motivated decision for cases permitted by law and when it is indispensable for the continuation of investigations,

and when there exist enough facts to prove the accuse. The decision of the court, which refuses the request for interception, can be appealed.

2. When there are grounded reasons to think that the delay may bring serious damage to the investigations, the prosecutor orders the interception by a motivated act and informs the court immediately, but not later than twenty-four hours. The judge, within twenty-four hours from the order of the prosecutor, makes the evaluation by a reasonable decision. In case this is not made within the fixed time-limit, the interception cannot continue and its results cannot be used.
3. The order for interception explains the way it shall be done and the time-limits, which cannot exceed fifteen days. The court may prolong this time-limit again as many times as is necessary for a period of twenty days if a crime is concerned and forty days if a serious crime is concerned.
4. For the completion of the interception, the prosecutor acts himself or by an officer of the judicial police.
5. In the register which is recorded by the prosecutor are noted the acts ordering, authorising, evaluating or prolonging the supervision, as well as the starting and the termination of the action of each interception.

**Article 223 - Actions of interception** (amended point 1 by the law no 8813, on 13.06.2002)

1. The actions of interception may be carried out only through equipment installed in designated spots and controlled by the district prosecutor.
2. The communications subject to interception are recorded and the actions are kept in the minutes. The content of the communications under interception shall be transcribed in the minutes.
3. The minutes and the records shall be immediately handed to the prosecutor and within five days from the termination of the actions they are deposited to the secretary together with the acts which have ordered, authorised, evaluated or prolonged the interception. When the investigations may be damaged by such depositing, the court authorises the prosecutor to postpone the depositing until the preliminary investigations are completed.
4. The defence lawyers and the attorneys of the parties shall be immediately informed of the depositing in the secretary and of their right to examine the acts and to listen to the records. The court, after hearing the prosecutor and the defence lawyers, decides on the expurgation of the records and minutes, which use is prohibited.
5. The court orders the complete transcription of the records to be taken. The transcriptions shall be put in the court file. The defence lawyers may obtain copies of transcriptions.

**Article 224 - The preservation of documentation**

1. The minutes and records are preserved in the office of the prosecutor who has ordered the interception until the decision becomes final, except those which use is prohibited. But, when this documentation is not necessary, the interested persons may request their extermination. This request is subject to decision of the court that has made the evaluation of interception. The extermination shall be performed under the control of the judge and the action shall be kept in the minutes.

**Article 225 - Use of the results of interception in other proceedings** ( as amended by the Law no 8813, on 13.06.2002)

1. The results of interception may be used in other proceedings if they are deemed necessary for the investigation of crimes. In such cases, the minutes and the records of interception shall be submitted to the other proceeding authority.

**Article 226 - Prohibition of use**

1. The results of interception may not be used when it is not made for cases provided by law or when the provisions of this section are not observed.
2. here may not be used the interception of the conversations or communications of the persons who are obliged to keep the secret because of their profession or duty, except when those persons have testified to the same facts or they have divulged them otherwise
3. The court shall order the extermination of the documentation of interception that may not be used, except when they constitute real evidence.

**Article 191/a – Obligation to submit computer data**

1. By Court Order, in case of proceedings for criminal offences in the area of information technology, upon the request of the prosecutor or of the accusing injured party, a person in possession or control of computer-data storage shall submit the computer data stored in a computer system or in another storage medium.
2. In framework of those proceedings, the court orders the service provider to submit any information on the subscribers for the services offered by the provider.
3. When there are grounded reasons to think that the delay may bring serious damage to the investigations, the prosecutor orders the obligation for the presentation of computer data specified in points 1 and 2 of this article, by a motivated act, and informs the court immediately. The court, within twenty-four hours from the notification, makes the evaluation of the prosecutor's decision.



**Article 208/a – Seizure of computer data**

1. In case of proceedings for criminal offences in the area of information technology, the court, upon the request of the prosecutor, rules on the seizure of data and of computer systems. In this decision, the court specifies the right to access search and obtain computer data in the computer system and prohibits further actions or provision of data or of computer system.
2. When there are grounded reasons to think that the sought computer data are stored in another computer system of part thereof and those data are legally accessible or available in the initial computer system being controlled, the court, upon the request of the prosecutor, orders immediately the search or access to this computer system as well.
3. In application of the court decision, the prosecutor or the judicial police officer empowered by the prosecutor, makes provision:
  - a) to prevent the implementation of further actions or secure a computer system or part of it or a computer-data storage medium;
  - b) to make and retain a copy of those computer data;
  - c) to render inaccessible or remove those computer data in the accessed computer system.
  - d) maintain the integrity of the relevant stored computer data;
4. As for the implementation of those actions, the prosecutor may order the summons of an expert who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein. The summoned expert may not refuse the task without any grounded reasons.

**Article 299/a – Expeditious preservation and maintenance of computer data**

1. The Prosecutor may order the expeditious preservation of specified computer data, including traffic data, where there are sufficient grounds to believe that the computer data is particularly vulnerable to loss, damage or modification
2. When the computer data are in a person's possession or control, the prosecutor may oblige that person to preserve and maintain the integrity of that computer data for a period up to a maximum of ninety days, to enable its disclosure and retrieval. The prosecutor's order, due to reasonable grounds, may be renewed only once.
3. The person charged to preserve and maintain the computer data shall be obliged to keep confidential the procedures and actions carried out in accordance with the second paragraph of this article until the end of investigations.

**Article 299/b-Expeditious preservation and partial disclosure of computer data**

1. The person charged with the expeditious preservation of traffic data is obliged to take all necessary measures to ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and ensure the expeditious disclosure to the authorized prosecutor's office or the judicial police officer, of a sufficient amount of traffic data to enable the identification of the service providers and the path through which the communication was transmitted.

**TITLE V - PRECAUTIONARY MEASURES**

**CHAPTER III. THE ARREST IN THE COMMISSION AND THE DETENTION**

**Article 256 - The interrogation of the arrested or the detained person**

1. The prosecutor interrogates the arrested or the detained person in the presence of the selected or appointed ex-officio defence lawyer. He shall notify the arrested or the detained person the fact for which he is being proceeded and the reasons of the interrogation, making known the information on his charge and, when the investigation are not impaired, even the sources.

**CHAPTER VI - PATRIMONIAL PRECAUTIONARY MEASURES**

**Section II – Preventive attachment**

**Article 274 -The scope of the preventive attachment**

1. When there is a danger that free possession of an object related to the criminal offence may aggravate or prolong its consequences or facilitate the commission of other criminal offences the competent court, on demand of the prosecutor, orders its attachment by reasoned decision.
2. The attachment may be also ordered for objects which are permitted to be confiscated.
3. When the circumstances of execution change, the court, on demand of the prosecutor or interested person, nullifies the attachment.

**Article 275 - Loss of effects of attachment**

1. By the decision of acquittal or dismissal of the case the court or prosecutor order the restitution of the attached objects to the one they belong, when it must not order their confiscation as being used or assigned to commit a criminal offence or because they have been produced or profited from the criminal offence.
2. When the conviction has been rendered, the effect of the attachment shall continue if the decision orders the confiscation of the attached objects.

3. The attached object shall not be returned when the court decides that the attachment shall be held to guarantee the credits.

#### **Article 276 - The appeal against the decision**

1. The decision imposing or not imposing the attachment may be challenged in appeal by any interested person.
2. The appeal is submitted within ten days from the rendering of the decision or from the day the interested has been notified the imposed attachment.
3. The appeal is submitted to the secretary of the court which has rendered the decision.
4. The appeal does not suspend the execution of the measure.
5. The appeal is subject to the decision of the court of appeal within fifteen days from the reception of the acts.
6. The court decides, as the case may be, the nullification, the alteration or the approval of the appealed decision.
7. When the decision is not announced or not executed within the fixed time-limit, the act imposing the attachment shall lose the effects.

**CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF ALBANIA** (Decree n°1059, dated 5 April 1995 of the President of the Republic of Albania, Sali Berisha as amended by Law n°8460, dated 11.02.1999 and Law n°8813, dated 13.06.2002)

### **CHAPTER III - THE EXECUTION OF SENTENCES**

#### **Section I – The execution of the foreign sentences**

#### **Article 512 - The recognition of foreign sentences**

1. The Minister of Justice, when it receives a sentence rendered abroad for Albanian citizens or foreigners or persons without citizenship, but residing in the Albanian state or for persons proceeded criminally in the Albanian state shall send to the prosecutor in the district court of the domicile or residence of the person a copy of the decision and relevant documents, along with the translations in Albanian language.
2. The Minister of Justice demands the recognition of a foreign sentence when it judges that in accordance with an international convention this decision must be executed or must be recognized other effects in the Albanian state.
3. The prosecutor shall submit a request to the district court for the recognition of the foreign sentence. Through the Minister of Justice he may request from foreign authorities the necessary information.

#### **Article 513 - The recognition of foreign courts sentences regarding civil effects**

1. Upon request of the interested, in the same proceedings and by the same decision, may be declared valid the civil dispositions of the foreign sentence in relation to the obligation to return the property or to compensate for the damage.
2. In other cases the request is presented, by the one who has an interest, to the court where the civil dispositions of the foreign sentence should be executed.

#### **Article 514 - Terms of recognition**

(Point "e" abrogated by the law no 8813, on 13.06.2002)

1. The foreign court sentence may not be recognized when :
  - a) the sentence has not become final according to the laws of the state in which it has been rendered,
  - b) the sentence contains dispositions which run against the principles of the rule of law of the Albanian state,
  - c) the sentence has been not rendered by an independent and impartial court or the defendant has been not cited to appeal before the trial or has been not recognized the right to be questioned in a language that he understands and to be assisted by a defence lawyer,
  - d) there are grounded reasons to think that the proceedings have been influenced by considerations regarding race, religion, sex, language or political beliefs,
  - e) the fact for which is rendered the sentence is not provided as a criminal offence by the Albanian law,
  - f) for the same fact and against the same person in the Albanian state has been rendered a final decision or a criminal proceeding is in course.

#### **Article 515 - Coercive measures**

1. Upon request of the prosecutor, the court which is competent to recognize a foreign sentence may impose a coercive measure to the sentenced person who is in the Albanian territory.
2. The chairman of the court, within five days from the execution of the coercive measure, takes steps regarding the identification of the person and notifies him the right to a defence lawyer.
3. The coercive measure imposed under this article shall be revoked when from the start of its execution have expired three months without being rendered the decision of recognition from the district court or six months without becoming final the decision.

4. Revocation and replacement of the coercive measure is subject to decision of district court.
5. The copy of the decision rendered by the court is notified, after the execution, to the prosecutor, the sentenced from the foreign court and his defence lawyer who may appeal to the court of appeal.

#### **Article 516 - Imposition of the punishment**

1. When recognizes a foreign sentence the court determines the punishment to be served in the Albanian state. It converts the punishment imposed in the foreign sentence into one of the sentences provided for the same fact by the Albanian law. This punishment shall be similar as a nature with that which is rendered by the foreign sentenced. The duration of the sentence may not exceed the maximal limit provided for the same fact by the Albanian law.
2. When the foreign sentence does not specify the duration of the sentence, the court provides it on the basis of the criteria indicated in the Criminal Code.
3. When the execution of the sentence rendered in the foreign state is suspended on parole the court, by the decision of recognition, in addition to other issues, does also dispose of the suspension on parole of the sentence. The same does the court when the defendant has been released on parole in the foreign country.
4. In order to specify the punishment by fine, the sum specified in the foreign sentence shall be converted in equal value into Albanian currency, observing the exchange rate of the day on which the recognition has been provided.
5. The decision of recognition regarding the execution of a confiscation shall also order the execution of the confiscation.

#### **Article 517 - The attachment**

1. Upon request of prosecutor the competent court may impose the attachment of sequestrable objects.
2. The decision is subject to appeal.
3. As far as they are applicable, the provisions regulating the preventive attachment shall be respected.

#### **Article 518 - The enforcement of a foreign judgment**

1. After being recognised, the criminal sentences of foreign courts are enforced in conformity with the Albanian law.
2. The prosecutor in the court which has made the recognition of a sentence takes the measures for its execution.
3. The sentence by imprisonment served in the foreign country is calculated for the effects of the execution.
4. The sum deriving from the execution of the fine penalty is paid into the bank of Albania. It may be paid into the state where the sentence is rendered, upon its request when that state, under the same circumstances should have decided the payment to be executed into the favour of the Albanian state.
5. The confiscated objects shall be delivered to the Albanian state. They are delivered, upon its request, to the state where the decision subject to recognition is rendered when this state is under the same circumstances should have decided the delivery in the Albanian state.

### **Section II - The enforcement of Albanian sentences abroad**

#### **Article 519 - Terms of enforcement abroad**

1. In cases provided by international conventions or by article 501, paragraph 2, the Minister of justice requests the execution of the sentences abroad or gives the consent when it is requested by a foreign state.
2. The execution of a sentence by a restriction of personal liberty abroad may be requested or permitted only if the sentenced person has become aware of the consequences, has declared freely that he gives consent and when the execution in the foreign state is appropriate to his social rehabilitation.
3. The execution abroad is also allowed under the conditions provided in paragraph 2, if the sentenced person is in the territory of the state subject to the request and the extradition is rejected or anyway is not possible.

#### **Article 520 - Court sentence**

1. Before requesting the execution of a decision abroad, the Minister of Justice shall send the acts to the prosecutor who presents a request to the court.
2. When the consent of the sentenced person is necessary, the consent should be given before the Albanian court. In case he is abroad, the consent may be given before the Albanian consular authority or before the foreign court.

#### **Article 521 - Cases when the enforcement of the sentence abroad is not permitted**

1. The Minister of Justice may not request the execution abroad of a criminal sentence by restriction of personal liberty when there are grounds to think that the sentenced person shall be subjected to persecution or discrimination acts due to race, religion, nationality, language or political beliefs or inhuman, cruel or degrading punishment and treatment.

**Article 522 - The request for detention abroad**

1. When the enforcement of a sentence restricting the personal liberty is requested and the sentenced person is abroad, the Minister of Justice requests his detention.
2. By the request for the execution of a confiscation order, the minister of Justice has the right to request the attachment of attachable objects.

**Article 523 - The suspension of enforcement in the Albanian state**

1. The execution of the sentence in the Albanian state is suspended once the execution in the foreign state has started.
2. The sentence may no longer be enforced in the Albanian state when, according to the foreign countries laws, it has been entirely served.

**Article 525 (law no 8813, on 13.06.2002)**

The legal provisions on courts on serious crimes will apply when the law that provides for the day when such courts will begin their activity comes into force.

\* \* \*

Also, the legal basis for tackling cases of mutual legal assistance, from material and procedural point of view, has been recently completed with two new draft laws which are foreseen to be approved soon in a plenary session before the Albanian Assembly (as soon as those initiatives will be approved and have legal force, their final texts will be made available to all concerned subjects):

- 1) *Draft Law "On jurisdictional relations with foreign authorities in criminal matters"* which specifies additional procedural rules in the area of jurisdictional relations with foreign authorities in criminal matters. This act, inter alias, reflects the recommendations given by different missions (such as PROSECO) concerning the transposition of provisions of the Additional Protocol to the Convention on Mutual Legal Assistance in Criminal Matters.
- 2) *Draft Law "On prevention and fight against organized crime and trafficking through preventive measures against property"*, which aims at the prevention and fight against organized crime and trafficking through the confiscation of the property of persons who have an unjustified economic level as a result of the alleged criminal activity. The draft law stipulates the procedures, competences and criteria on the implementation of preventive measures against property of persons who are suspected to participate in organized crime and trafficking activities.

## **(2) BOSNIA AND HERZEGOVINA**

### **CONSTITUTION OF BOSNIA AND HERZEGOVINA** (adopted on 1 December 1995)

#### **Annex II – Article 2 Continuation of Laws**

All laws, regulations and judicial rules of procedure in effect within the territory of Bosnia and Herzegovina when the Constitution enters into force shall remain in effect to the extent not inconsistent with the Constitution, until otherwise determined by a competent governmental body of Bosnia and Herzegovina.

#### **Article III: Responsibilities of and Relations between the Institutions of Bosnia and Herzegovina and the Entities**

1 – Responsibilities of the Institutions of Bosnia and Herzegovina

The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

(...)

g) – International and inter-Entity criminal law enforcement, including relations with Interpol.

### **CONSTITUTION OF REPUBLIKA SRPSKA**

#### **Article 6**

*Article 6 has been supplemented by Amendment XXX, reading as follows:*

“The citizen of the Republic may not be deprived of the citizenship, exiled or extradited”.

### **CRIMINAL PROCEDURE CODE OF BOSNIA AND HERZEGOVINA** (enacted by decision of the High Representative of 24. 01.2003)

#### **Chapter IV**

#### **JURISDICTION OF THE COURT**

#### **Section 1 - MATERIAL JURISDICTION AND COMPOSITION OF THE COURT**

#### **Article 23 – Material Jurisdiction of the Court**

(1) The Court shall have jurisdiction to:

- (a) adjudicate in first instance criminal matters within the scope of its material jurisdiction set forth by law;
- (b) decide appeals against first instance decisions;
- (c) decide the reopening of criminal proceedings in such instances as provided for under this Code;
- (d) decide any conflict of jurisdiction in criminal matters between courts of the Federation of Bosnia and Herzegovina and Republika Srpska and between courts of the Entities and the District of Brčko of Bosnia and Herzegovina;
- (e) decide any issue relating to international and inter-Entity criminal law enforcement, including relations with Interpol and other international police institutions, such as decisions on the transfer of convicted persons, and on the extradition and surrender of persons, requested from any authority in the territory of Bosnia and Herzegovina, by foreign states or international courts or tribunals;
- (f) carry out other tasks as stipulated by law.

(2) If a person committed several offenses and if the Court is competent with respect to one or more of them, while other courts are competent for the other offenses, in that case the priority shall be given to the trial before the Court.

### **LAW ON INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

#### **CHAPTER I. GENERAL PROVISIONS**

#### **Article 1 (Scope)**

(1) This Law shall regulate the manner and procedure of providing international legal assistance in criminal matters (hereinafter referred to as: „international legal assistance“), unless otherwise provided for in an international agreement or in the absence of an international agreement.

(2) For the purpose of this Law, international legal assistance shall be provided in any proceedings in respect of offences the prosecution of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.

(3) International legal assistance, in accordance with this Law shall be provided in minor offence proceedings before courts or administrative authorities in respect of the minor offences which are under the legislation of Bosnia and Herzegovina punishable by a prison sentence or fines, as well as in the cases where in such proceedings a decision of the administrative authorities may result in institution of proceedings before the court which has subject matter jurisdiction over criminal matters.

(4) International legal assistance shall be provided in respect of international courts and in respect of other international organisations of which Bosnia and Herzegovina is a member when so provided for in an international agreement.

## **Article 2 (Definitions)**

The terms and concepts used in this Law shall have the following meaning:

- a) „Requesting State“: The State whose competent judicial authority submits a request;
- b) „Requested State“ : The State whose competent judicial authority receives a request;
- c) «Sentencing State » : The State in which a person has been sentenced;
- d) «Receiving State: The State to which a convicted person shall be transferred or has been transferred to serve a sentence pronounced in the other State;
- e) „Domestic judicial authorities“: The courts and prosecutor's offices which are identified by a special law to provide international legal assistance and all authorities which may request international legal assistance under this Law;
- f) For the purpose of this Law, a domestic judicial authority is considered to include authorities referred to in Article 1, paragraph 3 of this Law;
- g) „Foreign judicial authorities“: Foreign courts and other authorities which are under the law of the requested State competent to proceed in criminal and minor offence matters;
- h) „Foreign nationals“: Persons who are not nationals of Bosnia and Herzegovina;
- i) „Accused person“ refers to both a person who is suspect and a person who is indicted;
- j) «Criminal legislation of Bosnia and Herzegovina» includes criminal codes and criminal procedure codes of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District of Bosnia and Herzegovina, and other legislation providing for criminal offences.

## **Article 3 (Letters rogatory)**

- (1) Request for international legal assistance shall be submitted in the form of letter rogatory.
- (2) Letter rogatory of the international judicial authorities and annexed documents shall be accompanied by a translation into either of the languages officially used in Bosnia and Herzegovina. The translation shall be authenticated by a certified court translator.
- (3) Letter rogatory of the domestic judicial authority and annexed documents shall be accompanied by a translation into the language officially used in the requested State.
- (4) Unless an international agreement or provisions of this Law provide otherwise, letter rogatory requesting international legal assistance shall indicate as follows:
  - a) the name of the authority which composed the letter rogatory, the designation of the case, the full
  - b) name of the requested State, and, where appropriate, the name of the requested authorities;
  - c) the legal basis for the provision of international legal assistance;
  - d) an accurate description of the act of international legal assistance requested and the reason for the request for international legal assistance;
  - e) the statutory title of the criminal offence and a summary of the facts;
  - f) the full personal data and the nationality of the person concerned and his or her capacity in the process;
  - g) the title of the acts and the name or the title of the receiving party if judicial or other acts are to be served and
  - h) other information that may be of relevance to the procedure upon the request.
- (5) Letters rogatory and acts submitted by courts and other competent authorities shall be signed and stamped by the seal of the court or of the authority that it originates from.
- (6) If the information stated in the letters rogatory and accompanied documents is not sufficient, additional information and documents may be requested.

## **Article 4 (Channels of communication)**

- (1) Letters rogatory of domestic judicial authorities requesting international legal assistance shall be transmitted to the foreign judicial authorities through the Ministry of Justice of Bosnia and Herzegovina. The same channels shall be used for letters rogatory of the foreign judicial authorities requesting international legal assistance that are addressed to the domestic judicial authorities.
- (2) Notwithstanding paragraph 1 of this Article, the domestic judicial authorities may address letters rogatory requesting international legal assistance directly to the foreign judicial authorities when such channel of communication is provided for in an international agreement.
- (3) In case of urgency, when such channel of communication is provided for in an international agreement, letters rogatory may be submitted and received through the International Criminal Police Organisation (Interpol).
- (4) In the case of communication provided for in paragraphs 2 and 3 of this Article, the domestic judicial authorities shall transmit a copy of the letter rogatory requesting international legal assistance to the Ministry of Justice of Bosnia and Herzegovina.
- (5) In the absence of international agreements or when an international agreement explicitly provides for the diplomatic channel of communication, the Ministry of Justice of Bosnia and Herzegovina shall submit and receive letters rogatory through the Ministry of Foreign Affairs of Bosnia and Herzegovina.
- (6) Requests for international legal assistance may also be received electronically or by other means of telecommunication which leave a written trace and when the competent foreign judicial authorities are ready to send, on the request, a written notice on the manner of submission and the original of the letter rogatory, but all this on the condition that this method of transmission is provided for in an international agreement.

**Article 5 (Urgency of procedure)**

(1) The Ministry of Justice of Bosnia and Herzegovina shall transmit without delay a request by the foreign judicial authorities for international legal assistance to the competent domestic judicial authorities for proceeding, unless it is obvious that the request that is not in compliance with an international agreement and should be refused by this Law.

(2) In cases provided for in Article 4, paragraph 3, the Interpol shall transmit the requests to the competent domestic judicial authorities through the Ministry of Justice of Bosnia and Herzegovina.

**Article 6 (Admissibility and manner of execution)**

(1) The issue of admissibility and the manner of execution of the act of international legal assistance which is the object of the letter rogatory of the foreign judicial authorities shall be decided by the competent domestic judicial authorities in accordance with domestic legislation, unless this Law or international agreements provide otherwise.

(2) The competent domestic judicial authorities shall comply with the letter rogatory of the foreign judicial authorities without delay.

**Article 7 (Transmission of letters rogatory to competent authorities)**

Where the authority which receives a request for international legal assistance has no jurisdiction to comply therewith, it shall transmit the request to the competent authority without delay, and shall notify the requesting authority to that effect.

**Article 8 (Scope - types)**

International legal assistance shall cover:

- a) General forms of legal assistance;
- b) Special forms of legal assistance:
  - i. Extradition of suspected, accused and convicted persons;
  - ii. Transfer and acceptance of criminal prosecutions;
  - iii. Recognition and enforcement of foreign court decisions.

**Article 9 (Refusal of legal assistance)**

(1) The competent domestic judicial authority may refuse a request for international legal assistance:

- a) if execution of the request would be inconsistent with the legal order of Bosnia and Herzegovina or is likely to prejudice its sovereignty or security;
- b) if the request concerns an offence which is considered a political offence or an offence connected with a political offence;
- c) if the request concerns a military offence.

(2) Criminal offences against humanity and other assets protected by international law and attempts to commit these criminal offences, as well as complicity in the commission of these criminal offences may not be ground for refusal of a request for international legal assistance within the meaning of paragraph 1, sub-paragraph b) of this Article.

(3) A request for international legal assistance shall not be refused exclusively on the grounds that it concerns an offence which is considered a fiscal offence under the domestic law.

**Article 10 (Grounds for refusal of requests)**

(1) The competent judicial authority shall refuse a request for international legal assistance:

- a) if, in respect of the same offence, the convicted person has been found not guilty, for substantive and legal reasons or the proceedings against him or her have been suspended, or if he or she has been acquitted, or the sentence has been enforced or may not be enforced under the law of the State in which the sentence has been pronounced;
- b) if there are criminal proceedings pending in Bosnia and Herzegovina against the convicted person for the same criminal offence, unless execution of the request is likely to result in a decision to release the convicted person;
- c) if prosecution or punishment of a person would be excluded under the domestic law by reason of lapse of time.

(2) The provisions of paragraph 1, sub-paragraph a) of this article shall not apply to the cases where the criminal proceedings are reopened in the requesting State.

**Article 11 (Reasons for non-compliance)**

Reasons shall be stated for decisions refusing a request for international legal assistance and non-compliance with a request.

**Article 12 (Reciprocity)**

(1) Requests for international legal assistance by the judicial authority of a State with which Bosnia and Herzegovina has not concluded an agreement on international legal assistance shall be complied with

only if, on the basis of assurances provided by the requesting State, that State may be expected to execute a similar request submitted by the domestic judicial authorities.

- (2) Such assurances as referred to in paragraph 1 of this Article shall not be requested in respect of effecting service of judicial decisions, writs and other documents.

## **CHAPTER II. GENERAL FORMS OF PROVISION OF MUTUAL LEGAL ASSISTANCE**

### **Article 13 (Concept)**

General forms of international legal assistance shall specifically include execution of specific procedural actions, such as service of summons to the suspect, accused, indicted, witness, expert, detainee or another party to criminal proceedings; service of documents, writs and other items relating to criminal proceedings in the requesting State, temporary seizure of objects, handing over of seized objects to the requesting State, hearing of the accused, witness and expert, inspection, search of premises and persons, arrest and control of delivery, surveillance and telephone tapping, then exchange of some information and notices, as well as other actions that may be carried out in criminal proceedings which require international legal assistance and are not inconsistent with the provisions of this Law.

### **Article 14 (Summons)**

In the summons to the suspect, accused and indicted person, witness, expert or another party to the proceedings who is summoned from the requested State, no forceful measure shall be specified to be imposed against the person if he or she fails to comply with the summons. If the person summoned fails to comply, no criminal sanction shall be imposed against him or her.

### **Article 15 (Service)**

- (1) Proof of service shall be given by means of a receipt which shall be compiled under the legislation of the requested State. The receipt of service shall indicate the place and date of the service and the signature of the person served or it shall state the other form of service.
- (2) If service could not be effected, the requesting State shall be immediately notified thereof and of the reasons that prevented service.

### **Article 16 (Protection of witnesses and experts)**

(1) A witness or expert who has permanent or temporary residence abroad shall not, for the duration of his or her stay in the territory of Bosnia and Herzegovina on the basis of summons by the domestic judicial authorities, be subjected, irrespective of his or her nationality, to prosecution, detention for an offence that is the subject of judicial proceedings in which his or her presence is requested or for an offence that he or she committed before leaving the territory of Bosnia and Herzegovina, or to be sent to serve a sentence on the basis of a court decision taken earlier.

(2) The provision of paragraph 1 shall not apply if a witness or expert, although given opportunity to do so, has not left the territory of Bosnia and Herzegovina within 15 days after he or she was informed that his or her presence was not needed any more. This period shall not include a period during which the witness or expert could not leave the territory of Bosnia and Herzegovina for objective reasons.

### **Article 17 (Protection of the accused)**

(1) A person summoned to appear before the domestic judicial authorities to be held criminally liable for an offence that he or she has been charged with, shall not, irrespective of his or her nationality, be subject to prosecution or detention, to any deprivation or restriction of personal liberty, by reasons of any offence or conviction that are not indicated in the summons and that preceded his or her departure from Bosnia and Herzegovina.

(2) Prosecution, deprivation or any restriction of personal liberty shall be allowed if the person summoned, after notified by a declaration of the court that his or her presence was no longer required, has remained for longer than fifteen days on the territory of Bosnia and Herzegovina despite the fact that he or she had an opportunity of leaving, or when the person, having left the territory of Bosnia and Herzegovina, voluntarily returns.

### **Article 18 (Summons and transfer of persons in custody)**

(1) If the foreign judicial authority summons a witness or for purposes of confrontation a person in the custody of Bosnia and Herzegovina, he or she may be temporarily transferred to the requesting State.

(2) A person shall be temporarily transferred to the requesting State if the requesting State provides assurances for his or her protection provided for in Article 17 of this Law, and the assurances that the person shall be returned within the period to be specified.

(3) Transfer may be refused:

- a) if the person in custody does not consent;
- b) if transfer is liable to prolong his or her detention;
- c) if there are other overriding grounds for not transferring him or her.

(4) Transfer may be postponed if the presence of the person in custody is necessary at criminal proceedings pending before the domestic judicial authorities.



(5) The Ministry of Justice of Bosnia and Herzegovina shall decide on the transfer of a person in custody with the previously obtained consent of the authority ordering the person's detention.

(6) If a third State is requested to transfer a person in custody through the territory of Bosnia and Herzegovina, his or her transit shall be granted if he or she is not a national of Bosnia and Herzegovina, which shall be decided by the Ministry of Justice of Bosnia and Herzegovina, upon the prior consent of the Ministry of Security of Bosnia and Herzegovina.

(7) In a case coming within paragraph 1 of this Article, the transferred person must be in the custody of the requesting State.

#### **Article 19 (Seizure of objects)**

(1) Objects, documents or property gain seized to serve as evidence, as well as records and decisions shall be delivered to the foreign judicial authority on its request at the end of the procedure of international legal assistance in Bosnia and Herzegovina.

(2) Where a third party who has acquired the right in good faith, a government body or an injured party having residence in Bosnia and Herzegovina claims ownership over the objects, documents or property gain referred to in paragraph 1 of this Article, those objects, documents or property gain shall be delivered only if the foreign judicial authority guarantees their return free of charge at the end of the evidentiary proceedings.

(3) Delivery may be postponed as long as the objects, documents or property gain concerned are necessary in criminal proceedings pending in Bosnia and Herzegovina.

#### **Article 20 (Delivery of seized objects)**

(1) Objects or property gain seized in order to be protected may be delivered to the foreign international authority, on its request, at the end of the procedure of international legal assistance, to be either confiscated or returned to the authorised person.

(2) Objects and property gain referred to in paragraph 1 of this Article shall include:

- a) objects used for the commission of a criminal offence;
- b) objects resulted from the commission of a criminal offence or their equal value;
- c) proceeds from a criminal offence or their equal value;
- d) gifts and other givings made in order to incite the commission of a criminal offence, and awards for a criminal offence or their equal value.

(3) Delivery may be made at any stage of criminal proceedings. It may be made only on the basis of a final and enforceable decision of the foreign judicial authority.

(4) Objects or property gain may be permanently kept in Bosnia and Herzegovina if:

- a) an injured party has residence in Bosnia and Herzegovina and they must be returned to him or her;
- b) the competent state authority states a claim by Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District of Bosnia and Herzegovina in respect of the objects or property gain;
- c) a person who did not partake in the commission of a criminal offence and whose claims are not guaranteed by the requesting State proves that he or she has acquired the right to these objects and property gain in good faith, in Bosnia and Herzegovina or abroad, and that person has residence in Bosnia and Herzegovina;
- d) the objects or property gain are necessary for the conduct of criminal proceedings pending in Bosnia and Herzegovina or for the implementation of a measure of confiscation in Bosnia and Herzegovina.

#### **Article 21 (Presence at actions of international legal assistance)**

(1) On the express request of the foreign judicial authority, the domestic judicial authority shall provide information on the place and time of the execution of the request.

(2) Representatives of interested judicial authorities and persons participating in criminal proceedings and their defence attorneys may attend the actions of legal assistance.

(3) Approval for the attendance by representatives of interested judicial authorities and other persons of the requesting State within the meaning of paragraph 2 of this Article in Bosnia and Herzegovina shall be given by the Ministry of Justice of Bosnia and Herzegovina, upon the previously obtained opinion of the authority executing the request, which is sent in writing to the Ministry of Justice of Bosnia and Herzegovina, with the notification referred to in paragraph 1 of this Article.

#### **Article 22 (Postponement)**

(1) The domestic judicial authority may postpone provision of international legal assistance if it is likely to prejudice the course of investigation, prosecution or criminal proceedings pending before the domestic judicial authorities which are related to the request received.

(2) If the execution of a request is postponed, the requesting competent foreign judicial authority shall be notified thereof and the reasons for the postponement shall be stated.

#### **Article 23 (Special procedure)**

(1) The domestic judicial authority shall, on the request of the requesting court or another authority, comply with the request in the manner specified therein provided that it is not inconsistent with the main principles of the legal order of Bosnia and Herzegovina and that such a possibility is provided for in an international agreement.

(2) The domestic judicial authority shall decide a request of the foreign judicial authority as soon as possible, taking into account specifically stipulated periods indicated in the request.

(3) If the domestic judicial authority establishes that it will not be able to comply with the deadline specified in the request received, it shall immediately notify the requesting State, indicating the time required for the execution of the request.

(4) If the domestic judicial authority is unable to execute the request in compliance with the specified requirements, it shall immediately notify thereof the requesting State, indicating the reasons for non-compliance.

#### **Article 24 (Joint investigation teams)**

If justified by the circumstances of a specific case, joint investigation teams may be established by an agreement between the competent prosecutor's office in Bosnia and Herzegovina and the competent foreign authorities to conduct a criminal investigation in the territory of one or more parties establishing the joint investigation team.

#### **Article 25 (Costs)**

(1) Provision of international legal assistance shall not entail refunding of expenses, except in the cases of:

a) a substantive reimbursement for expert testimony and other substantive expenses incurred by expert testimony;

b) expenses of temporary transfer of a person in custody for purposes of giving testimony or confrontation in the requesting State and

c) substantive and extraordinary expenses.

(2) A witness or expert who answers summons to appear sent by the domestic judicial authority shall be entitled to be refunded the travelling expenses and the allowances, in accordance with the domestic legislation.

(3) The summons to persons referred to in paragraph 2 of this Article shall indicate the allowances payable and the expenses refundable and on a specific request, they shall be granted an advance to cover the expenses.

(4) Giving an expert testimony may be conditioned on a prior depositing of an advance if the party is required to cover the expenses of expert testimony.

#### **Article 26 (Transmission of data without request)**

(1) Without a prejudice to their own investigations and criminal proceedings and under the condition of reciprocity, the domestic judicial authorities may transmit without requests to the competent judicial authorities information pertaining to criminal offences that they have gathered during their investigations if they deem that the transmission of such information could assist in instituting an investigation or criminal proceedings or if it could result in submission of a request for legal assistance.

(2) The competent judicial authority shall request from the competent foreign judicial authority that received the information referred to in paragraph 1 of this Article to be informed of the measures taken in respect of the information transmitted and it may also set other conditions for the use of such information in the State to which the information has been transmitted.

#### **Article 27 (Interim measures)**

On the request of the foreign judicial authorities and in accordance with domestic legislation, the domestic judicial authority shall take interim measures aimed at gathering evidence and securing evidence already gathered or protecting legal interests which have been endangered.

#### **Article 28 (Confidentiality)**

(1) The Ministry of Justice of Bosnia and Herzegovina and the competent domestic judicial authority shall, on the request of the foreign judicial authority, keep as secret the information indicated in the request, except insofar as is necessary for its execution.

(2) If the requirement referred to in paragraph 1 of this Article may not be met, the Ministry of Justice of Bosnia and Herzegovina, or the domestic judicial authority, shall immediately notify the foreign judicial authority.

#### **Article 29 (Transmission of information on convicted foreign nationals)**

(1) In respect of every foreign national convicted, immediately after the verdict has become final, courts in Bosnia and Herzegovina shall transmit the information to the foreign State, through the Ministry of Justice of Bosnia and Herzegovina and in the form as specified by the Ministry of Justice of Bosnia and Herzegovina.

(2) The Ministry of Justice of Bosnia and Herzegovina shall immediately forward such information to the State of nationality of the convicted person unless otherwise provided for in international agreement.

(3) On the request of the competent foreign judicial authorities, the Ministry of Justice of Bosnia and Herzegovina shall send a transcription of the verdict that is the subject of the information transmitted, on a case-by-case basis.

(4) On the request of the foreign judicial authorities, the Ministry of Justice of Bosnia and Herzegovina shall transmit information on other data entered in criminal records.

(5) On the request of the competent foreign judicial authority, data on persons who are nationals of that State and who are the subject of investigation or criminal proceedings pending in Bosnia and Herzegovina may also be transmitted.

(6) When it comes to criminal offences of counterfeiting money, money laundry, unauthorised production, storage and sale of narcotics, trafficking in persons, as well as other criminal offences in respect of which international agreements provide for data centralisation, the authority conducting criminal proceedings shall immediately transmit to the Ministry of Justice of Bosnia and Herzegovina the data on the criminal offence and offender concerned, and the first instance court shall also transmit the final verdict.

#### **Article 30 (Criminal records on the nationals of Bosnia and Herzegovina convicted abroad)**

(1) The competent authorities in charge of keeping criminal records in Bosnia and Herzegovina shall keep criminal records on the nationals of Bosnia and Herzegovina convicted abroad including the nationals of Bosnia and Herzegovina born abroad.

(2) The Ministry of Justice of Bosnia and Herzegovina shall forward data on nationals of Bosnia and Herzegovina convicted abroad who were not born in Bosnia and Herzegovina, upon receipt by another State, to the Ministry of Security of Bosnia and Herzegovina, which shall keep a central registry of the data and shall forward the data immediately to the authority in charge of keeping criminal records.

(3) If data on the nationals of Bosnia and Herzegovina convicted abroad are not translated into either of the languages officially used in Bosnia and Herzegovina, a translation shall be provided by the Ministry of Security of Bosnia and Herzegovina.

#### **Article 31 (Notice on legislation)**

On the request of the domestic judicial authorities, the Ministry of Justice of Bosnia and Herzegovina shall obtain the text of the legislation in force or previously in force in other states, as well as any information on specific legal matters if needed. In the same manner the Ministry of Justice of Bosnia and Herzegovina shall forward the text of domestic legislation or information on specific legal matters to the foreign judicial authorities when they so request, and those texts and information shall be provided by the authority competent to proceed in accordance with the legislation concerned.

### **CHAPTER III. EXTRADITION OF SUSPECTED, ACCUSED AND CONVICTED FOREIGN NATIONALS**

#### **Article 32 (Rules on extradition)**

(1) Extradition of suspected, accused or convicted foreign nationals from Bosnia and Herzegovina to another State shall follow the rules of this Law, unless otherwise provided for in an international agreement.

(2) Procedure of transfer of suspected or accused persons who are the subject of criminal proceedings before the international criminal courts shall be regulated by a special law.

#### **Article 33 (Admissibility of extradition)**

(1) Extradition of foreigners to another State shall be permitted for purposes of criminal prosecution or execution of a final and binding prison sentence.

(2) Extradition within the meaning of the preceding paragraph shall be permitted only in respect of those criminal offences that are punishable both under the legislation of Bosnia and Herzegovina and under the legislation of the requesting State.

(3) Extradition for purposes of criminal prosecution shall be permitted only in respect of those criminal offences punishable both under the criminal legislation of Bosnia and Herzegovina and the legislation of the requesting State with a prison sentence for a term not less than one year.

(4) Extradition for purposes of execution of a final prison sentence shall be permitted if the duration of the sentence pronounced or its remaining part to be enforced is not less than four months.

#### **Article 34 (Requirements for extradition)**

The requirements for extradition shall be as follows:

(a) that a person whose extradition is requested is not a national of Bosnia and Herzegovina;

(b) that a person whose extradition is requested has not been granted an asylum in Bosnia and Herzegovina or that the person concerned is not in the process of seeking asylum at the time of the submission of the extradition request;

(c) that the offence in respect of which the extradition is requested has not been committed in the territory of Bosnia and Herzegovina, against it or its national;

(d) that the offence in respect of which the extradition is requested constitutes a criminal offence under the criminal legislation of Bosnia and Herzegovina and under the legislation of the State in which it has been committed;

(e) that the offence in respect of which the extradition is requested is not a political or military criminal offence;

(f) that the statute of limitation does not apply with respect to criminal prosecution or execution of the sentence under the domestic legislation before the foreign national is taken into custody or examined as a suspect or accused, that the foreign national whose extradition is requested has not been convicted for the same criminal offence by a domestic court or that he or she has not been validly released by the domestic court in respect of the same offence, unless conditions have been met for reopening of criminal proceedings,

or that no criminal proceedings have been instituted in Bosnia and Herzegovina against the foreign national for the same criminal offence, and, if the proceedings have been instituted for an offence committed against a national of Bosnia and Herzegovina, that compensation insurance has been deposited for the claim under property law of the injured party;

(g) that the identity of the person whose extradition is requested is verified;

(h) that there are sufficient evidence for a suspicion that the foreign national whose extradition is requested committed the criminal offence or that there is a final and binding conviction;

(i) that the extradition of an alien is requested for the following purposes: criminal prosecution or punishment on the grounds of his or her race, sex, national or ethnic origin, religious belief or political views and that his or her extradition is not requested on the grounds of a criminal offence that carries a death sentence under the legislation of the State which is the extradition unless the State requesting the extradition has provided an assurance that no death sentence shall be pronounced or executed.

#### **Article 35 (Request for extradition)**

(1) Procedure for extradition of suspected, indicted or convicted foreign nationals shall be initiated on the request of the foreign State.

(2) The request for extradition shall be submitted by the requesting State through diplomatic channels or directly to the Ministry of Justice of Bosnia and Herzegovina if so provided for in an international agreement.

(3) If the principle of reciprocity is applicable with respect to the requesting State, the request shall be submitted through diplomatic channels.

(4) Documents provided for in the international bilateral agreement concluded between the requesting State and Bosnia and Herzegovina or in a multilateral agreement binding on both states shall be annexed to the request for extradition.

(5) Unless otherwise provided for in an international agreement, the following documents shall be required to be annexed to the request:

a) means for establishing the identity of the suspect, indicted or convicted person (a clear description, photographs, fingerprints etc.);

b) the certificate on the nationality of the foreign national if the person is a national of the requesting State, or the information on the nationality of the person if he or she is a national of another State ;

c) the text of relevant article of the criminal code of the requesting State applicable to the offence in respect of which the extradition is requested;

d) the original of the verdict or its authenticated copy, if the requested person has been convicted by a final and binding verdict, or the indictment, decision on detention, the original or its authenticated copy, or any other act which is equivalent to the above mentioned, which should indicate all information pertaining to the criminal offence committed and the identity of the offender, as well as evidence for a grounded suspicion.

(6) If the request and annexes provided for in paragraph 4 of this Article are written in a foreign language, a certified translation into either of the official languages in Bosnia and Herzegovina should be attached, unless otherwise provided for in an international agreement.

#### **Article 36 (Procedure following a request for extradition of a foreign national)**

(1) Upon receipt of a request for extradition and annexed documents, the Ministry of Justice of Bosnia and Herzegovina shall forward them immediately to the Prosecutor's Office of Bosnia and Herzegovina.

(2) The Prosecutor's Office of Bosnia and Herzegovina shall examine whether the request has been submitted pursuant to Article 34 of this Law. If the Prosecutor's Office has established that the request is not complete, it shall request the Ministry of Justice of Bosnia and Herzegovina to notify the competent authority of the requesting State to remove the shortcomings of the request.

(3) If the requesting State has submitted a complete extradition file, the file concerned shall be immediately forwarded to the Court of Bosnia and Herzegovina for adjudication

#### **Article 37 (Apprehension of a person sought)**

A person whose extradition is requested shall be apprehended on the basis of an international arrest warrant or of a request by the requesting State, in accordance with the provisions of this Law.

#### **Article 38 (Procedure before the preliminary proceedings judge)**

(1) After the person apprehended, whose extradition is requested, has been taken to the preliminary proceedings judge on the basis of an internal arrest warrant of the Interpol of Sarajevo, issued on the basis of an international arrest warrant of the requesting State, or on the basis of a request by the requesting State, the person concerned, whose identity has been established, shall be immediately informed of the grounds and evidence upon which his or her extradition is requested and shall be called upon to state whatever he or she has in his or her defence.

(2) The preliminary proceedings judge shall instruct the person referred to in paragraph 1 of this Article of the right to retain a defence attorney of his or her choice who may be present at questioning and if he or she does not do so, the court shall retain a defence attorney ex officio if the criminal offence in question is such in respect of which defence is mandatory in the criminal legislation of Bosnia and Herzegovina.

(3) A record shall be made of questioning and defence.

**Article 39 (Imposing detention on a person whose extradition is requested)**

(1) If the request for extradition complies with the requirements under Article 35, paragraph (5) of this Law, the preliminary proceeding judge shall issue an order imposing detention against a person whose extradition is requested on the proposal of the prosecutor in the following cases:

- a) if there is a risk that the person will avoid the extradition or the execution of extradition;
- b) if there are circumstances suggesting that the accused will destroy, conceal, alter or falsify clues relevant to the criminal offence or the evidence;
- c) if special circumstances suggest that the person whose extradition is requested will obstruct criminal proceedings or extradition proceedings by influencing witnesses, accessories and accomplices.

(2) Detention may not last longer than the execution of the decision on extradition, but not longer than six months from the date of apprehension.

(3) Detention shall not be ordered if the request for extradition itself is evident as uncalled-for.

(4) If justified by special reasons, the competent court may take measures to secure presence of a foreign national other than detention.

(5) When detention has been ordered, pursuant to the provisions of paragraph 1 of this Article, the preliminary proceedings judge shall notify of the detention the competent Ministry of Justice of Bosnia and Herzegovina, for the purpose of notification of the foreign State.

(6) The preliminary proceeding judge shall release the foreign national once the reasons for detention cease to exist or if no request for extradition has been submitted within 30 days from the date of the detention of the foreign national.

(7) The foreign State shall be notified of the deadline referred to in paragraph (6) of this Article and this deadline may be extended upon the request of that State in justified cases, but by a maximum of 10 additional days.

(8) If a person whose extradition is requested is in custody on another ground, the deadlines referred to in paragraphs (6) and (7) of this Article shall start to run as of the date indicated in the decision of the Court of Bosnia and Herzegovina ordering the detention for purposes of extradition.

(9) When the request as stipulated has not been submitted within a specified deadline, the preliminary proceedings judge shall issue an order to terminate detention.

**Article 40 (Procedure involving domestic nationals)**

(1) If, following an international arrest warrant by a foreign State, the Office for Co-operation with Interpol has established, on the basis of the current data base of nationals or otherwise that the person is a national of Bosnia and Herzegovina, it shall notify the Interpol Office of the requesting State that has issued the international warrant and the Interpol headquarters that it may not extradite its own nationals and may not issue a warrant to arrest a national of Bosnia and Herzegovina for purposes of extradition to another State.

(2) Along with the notification referred to in paragraph 1 of this Article the Office for Co-operation with Interpol shall notify the foreign State that the competent judicial authorities of that State may transfer the criminal prosecution to the competent judicial authorities of Bosnia and Herzegovina.

(3) The Office for Co-operation with Interpol shall notify the Ministry of Justice of Bosnia and Herzegovina of the international warrant issued by a foreign State requesting a national of Bosnia and Herzegovina and the measures taken.

(4) If the Office for Co-operation with Interpol has not been able to establish whether the person requested by the foreign State is a national of Bosnia and Herzegovina, and the Court of Bosnia and Herzegovina subsequently establishes that the person against whom detention has been ordered for purposes of extradition to another State is a national of Bosnia and Herzegovina, that person shall immediately be released unless there are conditions for acceptance of the criminal prosecution by the competent authorities in Bosnia and Herzegovina or other conditions justifying transfer of that person to another competent authority for purposes of conducting criminal proceedings falling within the jurisdiction of the authorities in Bosnia and Herzegovina.

**Article 41 (Temporary detention of a foreign national whose extradition is requested)**

(1) In urgent cases, where there is a danger that a foreign national whose extradition is requested will escape or go in hiding, and on a request of the competent authority of a foreign State, regardless of how the request has been transmitted, the competent police authority of Bosnia and Herzegovina shall apprehend the foreign national and take him or her to the preliminary proceedings judge of the Court of Bosnia and Herzegovina for decision making on temporary detention.

(2) The request of the requesting State shall be accompanied by the means to establish the identity of the foreign national, the order on detention or another act of the same legal effect, the name of the criminal offence in respect of which temporary detention is requested, and a statement by the foreign authority that extradition of the person concerned shall be requested.

(3) After the person whose extradition is requested has been brought in, the preliminary proceedings judge shall instruct the person of his or her rights within the meaning to Article 38, paragraph (2) of this Law, and, after questioning the person, the preliminary proceedings judge shall decide on detention.

(4) If a request of the requesting State for detention of the person whose extradition is requested has been granted, the requesting State shall be notified thereof through the Ministry of Justice of Bosnia and Herzegovina.

(5) Temporary detention may last up to eighteen days.

(6) The period specified in the preceding paragraph may be extended on the request of the requesting State, but in no case it shall exceed forty days.

(7) If the requested State fails to submit a request for extradition and annexed documents within deadlines specified, the Court of Bosnia and Herzegovina shall issue an order terminating the detention of the requested person.

(8) If the person whose extradition is requested is already in custody on another ground, the deadlines referred to in paragraphs 5 and 6 of this Article shall start to run as of the date of the order of detention issued on the basis of the request for temporary detention.

(9) If the person whose extradition is requested seeks to be released upon the expiry of the deadlines referred to in paragraphs 5 and 6 of this Article, extradition detention may no longer be ordered on the basis of a request for temporary detention, but only on the basis of a request submitted for extradition.

#### **Article 42 (Investigative actions and delivery of files to the Panel of the Court of Bosnia and Herzegovina)**

(1) Having heard the prosecutor and defence attorney, the preliminary proceedings judge shall take other investigative actions, as appropriate, to establish whether there are conditions for extradition of a foreign national, or for handover of the objects used for or helping the commission of the criminal offence if those objects have been seized from the foreign national.

(2) Upon completion of the investigative actions, the preliminary proceedings judge shall deliver the files on the investigation, including his or her opinion, to the Panel of the Court of Bosnia and Herzegovina.

(3) If criminal proceedings are pending before the domestic court against a foreign national whose extradition is requested for the same or another criminal offence, the preliminary proceedings judge shall state that fact in the files.

#### **Article 43 (Decision on requirements for extradition)**

(1) In extradition proceedings, when deciding the request of a foreign State for extradition, the Court of Bosnia and Herzegovina shall decide whether or not legal requirements for extradition have been met.

(2) In case that two or more states submit a request for extradition of a certain person, the Court of Bosnia and Herzegovina shall decide upon each request whether or not legal requirements for extradition to that State have been met, unless the Minister of Justice of Bosnia and Herzegovina, following a previous decision of the Court of Bosnia and Herzegovina, has taken the decision on extradition.

#### **Article 44 (Decision establishing legal requirements for extradition)**

(1) If the Panel of the Court of Bosnia and Herzegovina has found that legal requirements for extradition of a foreign national have been met, it shall confirm that finding by way of decision.

(2) The parties to the proceedings and the prosecutor shall have the right to appeal the decision referred to in paragraph (1) of this Article to the Appellate Division Panel of the Court of Bosnia and Herzegovina within three days of the receipt of the decision.

(3) The Appellate Division Panel of the Court of Bosnia and Herzegovina shall decide an appeal against the decision referred to in paragraph 1 of this Article by a Ruling.

(4) If, deciding an appeal against the decision referred to in paragraph 1 of this Article, the Appellate Division Panel of the Court of Bosnia and Herzegovina has found that the appeal is ill-grounded and that legal requirements for extradition of the foreign national have been met, or if against the first instance decision of the Panel no appeal has been filed, the case shall be transmitted to the Minister of Justice of Bosnia and Herzegovina who shall decide on the extradition.

#### **Article 45 (Decision rejecting extradition)**

(1) If the Panel of the Court of Bosnia and Herzegovina has found that legal requirements for extradition have not been met, it shall take a decision rejecting the request for extradition. This decision shall be submitted to the Appellate Division Panel of the Court of Bosnia and Herzegovina, which shall, having heard the prosecutor, confirm, revoke or alter the decision.

(2) If the foreign national is in detention, the Panel of the Court of Bosnia and Herzegovina may decide that the foreign national shall remain in detention until the decision rejecting the extradition becomes final.

(3) The final decision rejecting the extradition shall be delivered to the foreign State through the Ministry of Justice of Bosnia and Herzegovina.

(4) If the extradition is rejected due to the reasons referred to in Article 34, sub-paragraphs a) and b) of this Law, the decision rejecting the extradition shall also, together with all available documents and without delay, be forwarded to the competent Prosecutor's Office in Bosnia and Herzegovina for possible acceptance or institution of criminal proceedings, of which the Ministry of Justice shall be notified.

(5) In the case referred to in paragraph 4 of this Law, the competent prosecutor shall, within 30 days from the taking of the final decision rejecting the extradition, notify in writing the Ministry of Justice of Bosnia and Herzegovina of his or her decision, provided that this notification has indicated and elaborated reasons for non-instituting criminal proceedings in Bosnia and Herzegovina where criminal proceedings have not been instituted against the person whose extradition has been rejected. However, together with a notification on the institution of criminal proceedings against the person concerned, additional information and evidence may be requested from the other State.

(6) The notification referred to in the preceding paragraph shall be forwarded by the Ministry of Justice of Bosnia and Herzegovina to the State requesting extradition.

**Article 46 (Final decision on extradition)**

(1) If the Appellate Division Panel of the Court of Bosnia and Herzegovina has established in a final decision that legal requirements for extradition of a foreign national have been met, the Minister of Justice of Bosnia and Herzegovina, having inspected the complete extradition files, shall take a final decision granting or rejecting the extradition of the foreign national.

(2) No appeal may be filed against the decision referred to in paragraph (1) of this Article nor may administrative dispute proceedings be instituted.

(3) The Minister of Justice of Bosnia and Herzegovina may refuse the extradition if criminal offences for which the domestic law has foreseen a prison sentence of up to three (3) years are in question, or if a foreign court has imposed a prison sentence of up to one (1) year.

(4) In case that the Minister of Justice of Bosnia and Herzegovina refuses the extradition of a person with respect to whom the Court of Bosnia and Herzegovina has found in a final decision that the requirements for extradition have been met, the Prosecutor's Office of Bosnia and Herzegovina may institute administrative dispute proceedings.

**Article 47 (Postponing a decision on extradition)**

(1) The Minister of Justice of Bosnia and Herzegovina may decide to postpone the extradition because criminal proceedings before the domestic court are pending against the foreign national whose extradition has been granted, for another criminal offence or because the foreign national is serving a sentence pronounced in Bosnia and Herzegovina.

(2) The Minister of Justice of Bosnia and Herzegovina may decide to temporarily transfer the person whose transfer has been postponed to the requesting State for purposes of taking urgent procedural actions, if that will not prejudice the criminal proceedings pending before the domestic court and if the requesting State provides an assurance that he or she shall be kept in custody for the duration of the stay in that State and that it shall return him or her to Bosnia and Herzegovina within the deadline specified by the Ministry of Justice of Bosnia and Herzegovina at the proposal of the Court of Bosnia and Herzegovina.

**Article 48 (Principles of speciality)**

(1) The Minister of Justice of Bosnia and Herzegovina shall indicate in a decision granting extradition of a foreign national as follows:

(a) that the person concerned may not be prosecuted for another criminal offence, committed prior to the extradition;

(b) that the person concerned may not be subjected to the enforcement of a sentence for another criminal offence, committed prior to the extradition;

(c) that a sentence more severe than the sentence the person concerned has been convicted to may not be imposed on him or her, nor a death sentence;

(d) that criminal proceedings against him or her shall be repeated if convicted in absence and

(e) that the person concerned may not be extradited to a third State without the consent of Bosnia and Herzegovina for purposes of criminal prosecution for a criminal offence committed prior to the extradition granted or for purposes of enforcement of an imprisonment pronounced prior to the extradition granted.

(2) In addition to the conditions referred to above, the Minister of Justice of Bosnia and Herzegovina may specify other conditions for extradition, in accordance with this Law and an international agreement.

**Article 49 (Procedure in case of a larger number of requests for extradition by different States)**

(1) If extradition of a person is requested by two or more foreign states in respect of the same or different criminal offences, the Minister of Justice of Bosnia and Herzegovina shall, when making a decision, take into consideration all circumstances, but primarily the gravity of the criminal offences, the place of the commission, the order in which the requests have been submitted, the nationality of the person sought, the possibility of contributing to the person's better social rehabilitation and the possibility of further transfer to another State.

(2) If the requesting State has submitted a request for extradition in respect of several same or different criminal offences, some of which do not meet the requirements concerning the term of imprisonment referred to in Article 32, paragraphs 3 and 4 of this Law, the extradition may be granted in respect of those offences as well.

(3) Reasons shall be given for the decision referred to in paragraphs 1 and 2 of this Article.

(4) In making a decision referred to in paragraphs 1 and 2 of this Article, the consent may be given to the State which has been granted the extradition to possibly extradite the person concerned to one of the other states that have also requested the extradition.

**Article 50 (Extradition of a transferred person to a third State)**

(1) The State to which a person sought has been extradited may extradite that person to a third State only with consent of the competent authorities of Bosnia and Herzegovina.

(2) For the consent referred to in the preceding paragraph a request and annexed documents shall be required to be submitted by the State to which the person has been transferred, and the completion of the

proceedings provided for extradition of a foreign national from Bosnia and Herzegovina, in accordance with the provisions of this Law.

(3) The Minister of Justice of Bosnia and Herzegovina shall take a decision giving consent to the requesting State to extradite the transferred person to a third State.

**Article 51 (Delivery of decision to a foreign State and transfer of a person)**

(1) A decision of the Minister of Justice granting the extradition of a foreign national shall be delivered to the requesting State.

(2) A decision on extradition of a foreign national shall be delivered to the Office for Co-operation with Interpol and the Border Police of Bosnia and Herzegovina.

(3) The Office for Co-operation with Interpol shall arrange technical details relevant to the execution of the extradition with the Interpol of the requesting State and the execution of the extradition, i.e. transport and transfer of the person to the authorised persons of the requesting State shall be carried out by the Border Police of Bosnia and Herzegovina, with the assistance of the Office for Co-operation with Interpol.

(4) Transfer of a person whose extradition has been granted shall be carried out within no longer than thirty days from the date of the decision by the Minister of Justice of Bosnia and Herzegovina on extradition.

(5) If the requesting State without a justified reason fails to take over the person whose extradition has been granted within five days from the date agreed upon as the date of the transfer, the person concerned shall be released.

(6) The period provided for in the preceding paragraph may be extended to up to fifteen days on the express and justified request of the requesting State.

(7) The consequences of the failure to take over the person concerned and the deadlines provided for in paragraphs 5 and 6 of this Article shall be communicated by the Office for Co-operation with Interpol to the Interpol of the requesting State when making arrangements to take over the person sought.

**Article 52 (Simplified extradition)**

(1) A person whose extradition is requested may consent to surrender to the requesting State in a simplified procedure without conducting extradition proceedings and may renounce the entitlement to the principle of speciality.

(2) The preliminary proceedings judge shall inform a person whose extradition is requested, while questioning him or her, of the possibility for simplified surrender and its consequences within the meaning of the preceding paragraph.

(3) The consent and renunciation provided for in paragraph 1 of this Article shall be entered in the record of the Court of Bosnia and Herzegovina.

(4) The consent and renunciation provided for in paragraph 1 of this Article shall be irrevocable.

(5) The competent court shall immediately notify the Ministry of Justice of Bosnia and Herzegovina of the consent to the simplified extradition and the latter shall immediately forward the notification to the requesting State. In this case the requesting State shall not be required to submit a request for extradition.

(6) Simplified extradition shall have the effects of extradition and shall be subject to the same requirements, which shall be communicated to the requesting State.

**Article 53 (Re-extradition)**

(1) If the person extradited to the requesting State evades criminal prosecution or enforcement of the sentence in the requesting State and enters the territory of Bosnia and Herzegovina, he or she may be extradited on a repeated request.

(2) For the purpose of the provision of paragraph 1 of this Article, the requesting State shall not be required to submit extradition documents together with the request for extradition.

**Article 54 (Extradition proceedings upon submission of extradition documents after the deadline has expired)**

If the request for extradition and annexed documents have been transmitted by the requesting State after the expiry of the deadline specified by the Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina may decide to conduct extradition proceedings.

**Article 55 (Repetition of extradition proceedings)**

(1) If, between the date when the decision of the Court of Bosnia and Herzegovina became final and the issuing of the final decision of the Minister of Justice of Bosnia and Herzegovina on extradition there has been a change in circumstances concerning any of the requirements for extradition provided for in Article 34 of this Law, the Minister of Justice of Bosnia and Herzegovina shall deliver the complete files to the Court of Bosnia and Herzegovina and shall request that the Court repeat the extradition proceedings in accordance with the provisions of this Law with a view of establishing whether the legal requirements for the extradition have been met.

(2) If the Minister of Justice of Bosnia and Herzegovina has issued a decision on extradition, but before the moment of the extradition there has been a change of circumstances concerning any of the requirements provided for in Article 34 of this Law, the Minister of Justice of Bosnia and Herzegovina shall revoke the decision issued and shall deliver it to the Court of Bosnia and Herzegovina requesting the Court to repeat the



extradition proceedings in accordance with the provisions of this Law with a view of establishing whether the legal requirements for the extradition have been met.

(3) Pursuant to a decision of the Court of Bosnia and Herzegovina in the repeated proceedings the Minister of Justice of Bosnia and Herzegovina shall issue a decision on extradition.

**Article 56 (Search of persons and premises and seizure of objects)**

(1) Based on a request of the requesting State, the Court of Bosnia and Herzegovina may, at all times during the extradition proceedings, order a search of the person deprived of liberty whose extradition is requested, a search of premises and seizure of objects.

(2) The following objects found in the possession of the person deprived of liberty whose extradition is requested shall be handed over to the requesting State, on its request:

(a) the objects that will serve as evidence;

(b) the objects that have been acquired as a result of the criminal offence and that are found in the possession of the person sought at the moment of apprehension or are discovered subsequently.

(3) Surrender of the objects referred to in paragraph 1 of this Article shall be made even if the surrender of the person already approved may not be carried out because of the death or illness of the person sought.

(4) If the objects concerned are subject of forfeiture or confiscation in the territory of Bosnia and Herzegovina, they may be safeguarded temporarily in relation to the pending criminal proceedings or may be handed over to the requesting State on a condition that they are returned.

(5) The provisions of this Article shall be without prejudice to the ownership and other titles to the objects concerned.

**CHAPTER IV. PROCEDURE FOLLOWING A REQUEST OF BOSNIA AND HERZEGOVINA FOR EXTRADITION FROM ANOTHER STATE**

**Article 57 (Filing a request for extradition)**

(1) If criminal proceedings are conducted in Bosnia and Herzegovina against a person who is located in a foreign State or if a domestic court has imposed a sentence on the person who is located in a foreign State, the Minister of Justice of Bosnia and Herzegovina may submit a request for extradition of that person upon a substantiated proposal of the authority conducting the proceedings or the authority in charge of extradition.

(2) The request shall be submitted to the competent Ministry in charge of judicial affairs of the requested State through diplomatic channels or directly if so provided for in an international agreement.

**Article 58 (Request for a temporary detention)**

(1) In urgent cases, when there is a risk that the person whose extradition is requested will escape or go in hiding, the Minister of Justice of Bosnia and Herzegovina may, even prior to the submission of a request for extradition, request the requested State that the person be temporarily detained.

(2) Annexed to the request for temporary detention shall be means for the establishment of the identity of the person sought, the order on detention or another act of the same legal effects, or the final verdict if the matter has been decided, the name of the criminal offence in respect of which the detention is requested, as well as the statement that the extradition of the person sought shall be requested.

**Article 59 (Assurances as regards the person extradited)**

(1) If a person sought is extradited to Bosnia and Herzegovina, he or she may be subjected to prosecution or enforcement of the sentence only in respect of the criminal offence in respect of which the extradition was granted, unless the person has renounced that entitlement and the extraditing State did not specify that condition.

(2) If the extradition to Bosnia and Herzegovina of a person sought has been granted under certain conditions as regards the type or the term of the sentence that may be imposed or enforced and it has been accepted under such conditions by the requesting authority, the competent court in Bosnia and Herzegovina is bound by these conditions when imposing a sentence, and if the enforcement of the sentence that has already been imposed is in question, the court trying in the last instance shall alter the verdict and adjust the sentence imposed to the conditions of extradition.

(3) If the extradition to Bosnia and Herzegovina of a person sought has been granted under certain conditions as regards the type of institution in which the sentence will be served and it has been accepted under such conditions by the requesting authority, the competent authority sending the convicted to serve the prison sentence is bound by the conditions under which the person has been extradited as regards the type of institution in which the person is to serve the prison sentence.

(4) If the extradited person was detained in the foreign State for the criminal offence in respect of which he or she has been extradited, the time he or she spent in detention shall be included in the sentence.

**Article 60 (Costs)**

Costs arising from the transport of a person whose extradition to Bosnia and Herzegovina has been granted shall be covered out of the budget which finances the authority requesting the extradition, and those costs shall be planned and submitted by the Ministry of Justice which is financed out of that budget, and the Judicial Committee of the Brčko District at the level of the Brčko District.

## **CHAPTER V. ESCORT ACROSS THE TERRITORY OF BOSNIA AND HERZEGOVINA**

### **Article 61 (Request for escort across the territory of Bosnia and Herzegovina and costs)**

(1) If a foreign State has requested extradition from another foreign State, and the person sought is to be escorted across the territory of Bosnia and Herzegovina, on the request of the interested State, escort may be authorized by the Minister of Justice of Bosnia and Herzegovina provided that the person in question is not a national of Bosnia and Herzegovina and that the extradition is not being carried out for a political or military criminal offence.

(2) Request for escorting a person across the territory of Bosnia and Herzegovina shall include all the information referred to in Article 35, paragraph 5 of this Law.

(3) Under condition of reciprocity, the costs for escorting a person across the territory of Bosnia and Herzegovina shall be covered by the funds of the Budget of Bosnia and Herzegovina if the escort is carried out by land.

## **CHAPTER VI. ENFORCEMENT OF FOREIGN COURT JUDGMENTS IN CRIMINAL MATTERS**

### **Article 62 (General provisions)**

(1) A domestic court shall comply with a request of the sentencing State for enforcement of a court judgment in criminal matters only if so provided for in an international agreement and shall enforce a final judgment in respect of the sentence imposed by a foreign court in such a manner as to pass judgment imposing a sanction under the criminal legislation of Bosnia and Herzegovina.

(2) A foreign court judgment in criminal matters may be enforced both against nationals of Bosnia and Herzegovina and against persons who have residence in the territory of Bosnia and Herzegovina.

(3) A foreign court judgment in criminal matters entailing imprisonment may be enforced:

(a) on the request of a foreign State in the case where a person convicted is out of reach of that State and he or she is both a national of Bosnia and Herzegovina and has residence in Bosnia and Herzegovina, or only has residence in Bosnia and Herzegovina and

(b) on the request of a national of Bosnia and Herzegovina who is serving a sentence in the sentencing State for transfer to Bosnia and Herzegovina for purposes of continuation of service of the sentence imposed in the sentencing State.

### **Article 63 (Requirements for enforcement of foreign judgment in criminal matters)**

(1) Unless otherwise provided for in an international agreement, a foreign court judgment in criminal matters shall be enforced only if the following requirements have been met:

(a) the judgment is final and has been pronounced by the competent judicial authority of the sentencing State;

(b) the criminal offence is also identified as a criminal offence under the laws of Bosnia and Herzegovina;

(c) at the time of the submission of the request, the person convicted has to serve at least six more months of the imposed sentence of imprisonment;

(d) the person convicted has consented to the enforcement;

(e) the person subject of enforcement of a foreign court judgment in criminal matters has not already been convicted for that criminal offence in Bosnia and Herzegovina or criminal proceedings for the same criminal offence are not pending in Bosnia and Herzegovina or the person has been acquitted in Bosnia and Herzegovina and

(f) that the enforcement of the criminal sanction is excluded under the legislation of the sentencing State and Bosnia and Herzegovina by reason of lapse of time.

(2) A foreign court judgment in criminal matters shall not be enforced:

a) where enforcement would run counter to the principles of the legal system of Bosnia and Herzegovina or the obligations that Bosnia and Herzegovina has committed to by signing an international agreement; and

b) where the authority of Bosnia and Herzegovina which decides on a request considers the criminal offence in respect of which the enforcement is requested to be of a political or military nature.

### **Article 64 (Subject matter and territorial jurisdiction of the court to conduct proceedings upon a request)**

Subject matter and territorial jurisdiction of the court in Bosnia and Herzegovina to conduct proceedings upon a request to recognise and enforce a foreign court judgment in criminal matters shall be determined in the same manner as in respect of the conduct of criminal proceedings in the concrete case if such proceedings were to be conducted in Bosnia and Herzegovina.

### **Article 65 (Documents to be annexed to a request of the sentencing State)**

If an international agreement provides that the Contracting States may state other requirements in addition to those provided for in the agreement in respect of documents to be annexed to a request for enforcement, the sentencing State shall be required to submit:

a) The original or an authenticated copy of a final judgment with the clause stating that it is final;

b) The information on the person convicted, including, besides the personal data, the information on the nationality, the permanent residence, the place of birth, the last place of residence, as well as other data that may be relevant to the determination of the jurisdiction of the court to decide the request;

- c) The information concerning the sentence pronounced, including the information on the time spent in detention and/or serving the sentence of imprisonment and
- d) A copy of the applicable legal provisions on which the judgment is based.

**Article 66 (Procedure following a request of a foreign State for recognition and enforcement of a foreign court judgment in criminal matters)**

(1) When the Ministry of Justice of Bosnia and Herzegovina receives a request for recognition and enforcement of a foreign court judgment in criminal matters, it shall forward the request with the annexed documents to:

- a) The Court of Bosnia and Herzegovina for criminal offences falling within the jurisdiction of the Court of Bosnia and Herzegovina;
- b) The competent Entity Ministry of Justice, or the Judicial Committee of the Brčko District of Bosnia and Herzegovina, for criminal offences falling within the jurisdiction of the courts in the Entities or the Court of the Brčko District of Bosnia and Herzegovina respectively.

(2) Upon receipt of the request and documents, the Entity Ministry of Justice or the Judicial Committee of the Brčko District of Bosnia and Herzegovina shall forward them to the competent court for decision.

(3) If the competent court establishes that the request is not accompanied with required documents pursuant to an international agreement or this Law, it shall request through the Ministry of Justice of Bosnia and Herzegovina that the competent judicial authorities of the sentencing State supplement the files.

(4) If the court which has received the files establishes that it is not competent to decide, it shall forward the request and files to the court which is competent as to subject matter and territory and shall notify the Ministry of Justice of Bosnia and Herzegovina to that effect.

(5) If the sentencing State fails to submit required documents within three months, the request and files shall be returned to the sentencing State and that State shall retain the right to resubmit a request with complete files.

**Article 67 (Defence Attorney)**

Throughout the proceedings a person against whom enforcement of a foreign court judgment in criminal matters is sought may have a defence attorney of his or her choice, and if he or she does not retain a defence attorney, the court shall appoint one ex officio if the criminal offence in question is a criminal offence punishable with a sanction for which defence in criminal proceedings is mandatory under the law of Bosnia and Herzegovina.

**Article 68 (Passing a judgment)**

(1) The competent court shall decide a request for recognition and enforcement of a foreign court judgment in criminal matters adjudicating as a Panel composed of three judges, without a trial.

(2) The prosecutor, convicted person and defence attorney shall be notified of the session of the Panel where the decision is made.

(3) In deciding a request, the court shall be bound by the facts established in the foreign judgment and the operating part of the judgment that the court has passed shall include the complete operating part and the indication of the court referred to in the foreign judgment and shall impose a sanction. The decision on the sanction shall be based on the criminal legislation of Bosnia and Herzegovina, and the statement of reasons for the judgment shall contain the reasons taken into account in the determination of the sanction.

(4) A recognised foreign judgment in criminal matters shall be enforced in the same manner as if it were passed by the court which has recognised the judgment.

(5) In passing a judgment, the court may not pronounce a sentence more severe than the one pronounced by the foreign court.

**Article 69 (Appeal against sentence)**

(1) A sentence referred to in Article 68 of this Law may be appealed by the prosecutor, convicted person and his or her defence attorney within 30 days from the receipt of the sentence.

(2) The court Panel competent to decide appeals against judgments shall decide an appeal against the judgment passed following a request for recognition and enforcement of a foreign judgment in criminal matters, in accordance with the relevant provisions of the Criminal Procedure Code which governs the operation of that court.

**Article 70 (Delivery of a final judgment)**

A final sentence recognising the foreign judgment in criminal matters shall be delivered through the Ministry of Justice of Bosnia and Herzegovina to the sentencing State and the convicted person.

**Article 71 (Consequences of the acceptance of enforcement)**

(1) If enforcement of a foreign judgment in criminal matters has been accepted, the right to enforcement of that judgment shall temporarily cease to exist in the sentencing State and further enforcement shall be governed by the laws in Bosnia and Herzegovina.

(2) The sentencing State shall be exclusively competent to decide a request for reopening of criminal proceedings.

(3) The sentencing State and Bosnia and Herzegovina shall have the power to decide to mitigate the term of sentence and to grant pardon or amnesty.

(4) If the court judgment on which a request of the sentencing State for enforcement has subsequently been revoked or revised, the competent court in Bosnia and Herzegovina shall, following the new judgment of the sentencing State and on the request of the convicted person, repeat proceedings of recognition and enforcement of the foreign judgment in criminal matters and decide on further service of the sentence.

(5) If the convicted person has evaded enforcement in Bosnia and Herzegovina, the sentencing State shall regain the right to enforcement. The sentencing State shall be required to immediately notify Bosnia and Herzegovina of these circumstances.

(6) Bosnia and Herzegovina and the sentencing State shall notify each other of the circumstances provided for in paragraph 5 of this Article.

**Article 72 (Mandatory notification)**

Bosnia and Herzegovina shall notify the sentencing State of all circumstances pertaining to pardon and amnesty.

**Article 73 (Filing a request in the proceedings upon the request of the judicial authorities in Bosnia and Herzegovina for recognition and enforcement of a judgment of the domestic court in criminal matters)**

The Ministry of Justice of Bosnia and Herzegovina shall, on the request of the competent domestic authority in charge of enforcement of a criminal sanction, request that a foreign State recognise and enforce a judgment of the domestic court in criminal matters if:

(a) Bosnia and Herzegovina may not secure enforcement of a judgment of the domestic court in criminal matters and

(b) If, due to transferring enforcement, better social rehabilitation of a convicted person may be expected.

**Article 74 (Procedure of filing a request)**

(1) A request submitted to a foreign State for enforcement of a judgment of the domestic court in criminal matters shall be accompanied with the documents required by an international agreement, but in any case with the documents required by Article 64 of this Law.

(2) Language of the request and attachments to the request shall be specified in an international agreement.

**Article 75 (Consequences of the acceptance of enforcement of a domestic court judgment)**

If a foreign State accepts enforcement of a domestic court judgment in criminal matters, the competent judicial authority in Bosnia and Herzegovina shall suspend the enforcement as of the date of commencement of the enforcement in the receiving State.

**Article 76 (Consequences of the acceptance of enforcement in case of revision or termination of the enforcement of judgment in criminal matters)**

(1) If, after a foreign State has taken over enforcement of a court judgment in criminal matters, there has been revision or termination of the enforcement of the judgment in Bosnia and Herzegovina, the receiving State shall be notified to that effect.

(2) If a convicted person has evaded the enforcement of the judgment in criminal matters in the receiving State which has recognised the domestic judgment, the enforcement shall continue in Bosnia and Herzegovina.

**CHAPTER VII. TRANSFER OF CONVICTED PERSONS FROM A FOREIGN STATE TO BOSNIA AND HERZEGOVINA**

**Article 77 (General provisions)**

(1) A convicted national of Bosnia and Herzegovina who is serving the sentence of imprisonment in a foreign State may, on his or her request, be transferred to Bosnia and Herzegovina for purposes of continuation of service of the imprisonment imposed in the foreign State.

(2) The enforcement of the imprisonment against the convicted national of Bosnia and Herzegovina may be transferred only with consent of the sentencing State, provided that the convicted national of Bosnia and Herzegovina has expressed consent to the transfer and that the remaining term of imprisonment to be served is not less than six months.

**Article 78 (Procedure upon requests of convicted nationals of Bosnia and Herzegovina for transfer to Bosnia and Herzegovina for purposes of continuation of serving a sentence imposed in the sentencing State)**

(1) The manner and procedure of passing judgments on requests of nationals of Bosnia and Herzegovina for transfer to Bosnia and Herzegovina for purposes of continuation of service of the imprisonment imposed in the sentencing State shall be also governed by the provisions of Article 65, 66, 67 and 68 of this Law.

(2) After the domestic court has passed judgment recognising a foreign judgment in criminal matters, the former shall be served upon the convicted person in the sentencing State and also submitted to the competent authorities of the sentencing State.

(3) After the convicted person has signed the receipt of the judgment served, the confirmation of receipt shall be forwarded to the court passing the judgment.

(4) After the judgment has become final and the competent authorities of the sentencing State have agreed to it, activities concerning transfer of the convicted person from the sentencing State to Bosnia and Herzegovina shall start.

## **CHAPTER VIII. TRANSFER OF CONVICTED PERSONS FROM BOSNIA AND HERZEGOVINA TO A FOREIGN STATE**

### **Article 79 (Procedure upon petitions of foreign nationals for transfer to the state of their nationality for purposes of continuation of serving a sentence imposed in Bosnia and Herzegovina)**

(1) A convicted foreign national who is serving the sentence of imprisonment in Bosnia and Herzegovina under the judgment of the domestic court may file a petition to continue to serve the sentence imposed in the State of his or her nationality.

(2) The penal institution in which the convicted foreign national serves the sentence shall be required to inform the person of the possibility to serve the sentence pronounced in the State of his or her nationality..

(3) The petition referred to in paragraph 1 of this Article shall be submitted to the penal institution in which the foreign national serves the sentence.

(4) The penal institution shall complete documents to be attached to the petition filed by the convicted person in accordance with the provisions of the international agreement binding on Bosnia and Herzegovina and on the State of origin of the convicted person, or in accordance with Article 64 of this Law, and the files thus completed shall be delivered to the Ministry of Justice of Bosnia and Herzegovina.

(5) In respect of persons convicted by the courts in the Entities and the Brčko District of Bosnia and Herzegovina, petitions referred to in paragraph 1 of this Article shall be submitted through the Entity Ministries of Justice, or the Judicial Committee of the Brčko District of Bosnia and Herzegovina respectively.

(6) The Ministry of Justice of Bosnia and Herzegovina shall forward the petition filed by the convicted person to the State in which the convicted person wishes to serve or to continue to serve the sentence and which is the State of nationality of the person.

### **Article 80 (Decision on transfer of a foreign national)**

If the State of the nationality of a convicted person has taken over the enforcement of the sentence in respect of that person, a final decision on the transfer of the foreign national shall be taken by the Minister of Justice of Bosnia and Herzegovina, with previously obtained consent of the Entity Ministries of Justice or the Judicial Committee of the Brčko District of Bosnia and Herzegovina in respect of judgments passed in the Entities or the Brčko District of Bosnia and Herzegovina, while in respect of judgments passed by the Court of Bosnia and Herzegovina, a final decision shall be taken by the Minister of Justice of Bosnia and Herzegovina only on the basis of the judgment of that Court.

### **Article 81 (Place, time and manner of transfer)**

The date, hour and place of the transfer of the convicted person from Bosnia and Herzegovina to the receiving State or from the sentencing State to Bosnia and Herzegovina, and the manner of his or her transport shall be arranged between the Office for Co-operation with Interpol and the Interpol of the foreign State, and the transfer shall be carried out by the Border Police of Bosnia and Herzegovina, with the assistance of members of the Office for Co-operation with the Interpol.

### **Article 82 (Costs of transfer)**

(1) Costs arising from the transfer of a convicted person shall be covered by the receiving State, except for the costs which have been exclusively incurred in the sentencing State.

(2) Costs arising from the transport of a person whose extradition to Bosnia and Herzegovina has been granted shall be covered out of the budget which finances the court which has passed the judgment on transfer of the continuation of the service of the imprisonment by the convicted person, and those costs shall be planned and submitted by the Ministry of Justice which is financed out of that budget, or by the Judicial Committee of the Brčko District at the level of the Brčko District.

(3) If the arranged transfer of a convicted person from the sentencing State to Bosnia and Herzegovina has failed for any reason, additional costs to that effect shall be covered by the budget user, in accordance with Paragraph (2) of this Article.

## **CHAPTER IX. TRANSFER AND ACCEPTANCE OF CRIMINAL PROSECUTION**

### **Article 83 (Transfer of criminal prosecution to a foreign State)**

(1) If in the territory of Bosnia and Herzegovina a criminal offence has been committed by a foreigner who has residence in a foreign State, the criminal files may be transferred to that State for purposes of criminal prosecution and trial, provided that the foreign State does not object thereon.

(2) Transfer of criminal prosecution and trial is not permitted if it would expose a foreign national to unjust proceedings, inhuman and degrading treatment or punishment.

(3) Before an indictment has been brought, the prosecutor shall decide on the transfer. After the indictment has been brought and before case has been referred to the judge or the panel for purposes of scheduling the

main trial – the decision shall be made by the preliminary proceedings judge at the proposal of the prosecutor.

(4) After the main trial has started, a decision on the transfer of the criminal prosecution shall be made, at the proposal of the prosecutor, by the judge or the panel which shall conduct the main trial.

(5) Transfer may be made in respect of criminal offences falling within the jurisdiction of the court which are punishable by imprisonment for a term up to ten years, unless otherwise provided for in an international agreement.

(6) If the injured person is a national of Bosnia and Herzegovina, the transfer shall not be allowed if he or she does not consent, unless there has been assurance that his or her claim under property law shall be asserted.

**Article 84 (Request for acceptance of criminal prosecution by a foreign State)**

(1) A request for acceptance of criminal prosecution by a foreign State shall be submitted in the form of letter rogatory.

(2) Letters rogatory for acceptance of criminal prosecution, unless otherwise provided for in an international agreement, shall include among other things the personal information on the suspect or the accused person, his or her nationality, the place of residence, the description and name of the criminal offence, as well as the statement of reasons why the criminal proceedings are transferred to the requested State.

(3) Letters rogatory and attachments to them should be translated into the language of the requested State, unless otherwise provided for in an international agreement.

**Article 85 (Procedure upon a request of domestic judicial authorities for acceptance of criminal prosecution from a foreign State)**

(1) A letter rogatory of the domestic judicial authority for acceptance of the criminal prosecution from a foreign State with the complete files of the criminal case shall be delivered to the Ministry of Justice of Bosnia and Herzegovina.

(2) If the case to be relinquished falls within the jurisdiction of the judicial authority of the Entity, or the judicial authorities of the Brčko District of Bosnia and Herzegovina, a letter rogatory referred to in Article 83 of this Law with all attachments shall be delivered to the Ministry of Justice of Bosnia and Herzegovina through the Entity Ministry of Justice or the Judicial Committee of the Brčko District of Bosnia and Herzegovina.

(3) Upon receipt of the letter rogatory for transfer of the criminal prosecution, the Ministry of Justice of Bosnia and Herzegovina shall forward it together with the complete files of the criminal case to the competent authority of the requested State and shall ask the competent authority of the requested State to inform back the Ministry of Justice of Bosnia and Herzegovina on the decision of the competent foreign judicial authority of the requested State concerning the request submitted.

(4) If, upon receipt of the letter rogatory, the Ministry of Justice of Bosnia and Herzegovina establishes that it is incomplete or that it has not been translated into the language of the requested State where so required by an international agreement, it shall request the authority submitting the letter rogatory to remove the shortcomings of the letter rogatory within 30 days.

(5) If the authority that the letter rogatory has been returned to fails to remove the shortcomings within the period specified in the preceding paragraph, the letter rogatory and files shall be returned to that authority.

**Article 86 (Acceptance of criminal prosecution upon a request of a foreign State)**

(1) Upon letter rogatory of the judicial authorities of the requesting State, the competent judicial authority in Bosnia and Herzegovina may accept criminal prosecution in the cases provided for in the law and an international agreement.

(2) The competent domestic judicial authority in Bosnia and Herzegovina may accept to conduct criminal proceedings in respect of a criminal offence committed abroad even in the case where extradition from Bosnia and Herzegovina is not permitted upon a request of the foreign State, and when the foreign judicial authority seeking extradition has stated that the person sought will not be further prosecuted in respect of the same criminal offence, after the competent judicial authority in Bosnia and Herzegovina had passed final judgment.

(3) Upon receipt of the letter rogatory of the requesting State requesting acceptance of criminal prosecution, the Ministry of Justice of Bosnia and Herzegovina shall forward it to:

a) The Prosecutor's Office of Bosnia and Herzegovina, in respect of criminal offences within the jurisdiction of the Court of Bosnia and Herzegovina;

(b) The competent Prosecutor's Office in the Entity through the Entity Ministry of Justice, in respect of criminal offences within the jurisdiction of the courts in the Entity and

(c) The competent Prosecutor's Office of the Brčko District of Bosnia and Herzegovina through the Judicial Committee of the Brčko District of Bosnia and Herzegovina, in respect of criminal offences within the jurisdiction of the court in the Brčko District of Bosnia and Herzegovina.

(4) If the letter rogatory of the foreign State requesting acceptance of the criminal prosecution has been accompanied with a claim under property law, that claim shall be treated as if submitted to the court.

**Article 87 (Content of letters rogatory for the acceptance of criminal prosecution)**

- (1) Letters rogatory of a foreign State requesting acceptance of criminal prosecution shall include all the elements provided for in an international agreement if such an agreement exists.
- (2) Attached to the letter rogatory referred to in the preceding paragraph of this Article shall be criminal files with all evidence and the reference to the criminal provisions of the criminal code applied in the requesting State.

**Article 88 (Procedure upon requests of foreign State for acceptance of criminal prosecution)**

- (1) The competent prosecutor shall decide a request of a foreign State for acceptance of criminal prosecution.
- (2) If the criminal prosecution has been accepted, criminal proceedings shall be conducted in accordance with the criminal legislation in Bosnia and Herzegovina.

**Article 89 (Validity of evidentiary actions)**

The evidentiary actions that the judicial authorities have carried out under the legislation of the requesting State shall be made equal to the corresponding evidentiary actions under the legislation of Bosnia and Herzegovina, unless this would run counter to the fundamental principles of the domestic legal system and the principles of the international instruments on the protection of human rights and fundamental freedoms.

**Article 90 (Refusal to accept criminal prosecution)**

- (1) The foreign State that has transmitted the letter rogatory shall be notified of the decision refusing acceptance of the criminal prosecution and of the final decision taken in the criminal proceedings.
- (2) If the acceptance of criminal prosecution requested in the letter rogatory of the requesting State has been refused, the competent prosecutor shall provide an explanation of the reasons why the criminal prosecution has not been accepted and shall forward this explanation together with the complete files to the Ministry of Justice of Bosnia and Herzegovina to be returned to the requesting State.

**Article 91 (Consequences of acceptance of criminal prosecution by domestic judicial authorities)**

- (1) Legal consequences of acceptance of criminal prosecution by the authorities of Bosnia and Herzegovina upon letters rogatory of foreign States shall be specified in the provisions of an international agreement if such an agreement exists.
- (2) In the absence of an international agreement, legal consequences of acceptance of criminal prosecution by the authorities of Bosnia and Herzegovina upon letters rogatory of the foreign States shall be those that the requesting State, since the moment the decision on the letter rogatory is taken, may not prosecute the person concerned in respect of the criminal offences referred to in the letter rogatory until the decision of the authority of Bosnia and Herzegovina on the acceptance of the criminal prosecution is taken.
- (3) The requesting State shall be considered to have given up criminal prosecution of a person if:
- a) The competent authority in Bosnia and Herzegovina which has received the letter rogatory has finally terminated criminal proceedings due to the lack of evidence or due to the fact that the act committed is not a criminal offence;
  - (b) The person convicted in Bosnia and Herzegovina has been released in a final judgment;
  - (c) The decision of the court taken in Bosnia and Herzegovina has already been enforced or enforcement may not be implemented under the law or due to the orders granting pardon or amnesty, or in accordance with the law of Bosnia and Herzegovina or the requesting State the decision is excluded by reason of lapse of time.
- (4) The right to prosecution and enforcement of the judgment shall be returned to the foreign State:
- (a) if Bosnia and Herzegovina notifies the requesting State that it will not accept the criminal prosecution;
  - (b) if Bosnia and Herzegovina refuses the letter rogatory of the requesting State for acceptance of the criminal prosecution;
  - (c) if Bosnia and Herzegovina notifies the requesting State that it will withdraw the letter rogatory already accepted and
  - (d) if the requesting State withdraws its letter rogatory before the competent authority in Bosnia and Herzegovina has taken a decision upon the request of the foreign State.

**Article 92 (Delivery of information on the status of the proceedings)**

- (1) The authority that has accepted criminal proceedings in Bosnia and Herzegovina or the authority which conducts criminal proceedings in Bosnia and Herzegovina shall, on the request of the requesting State, provide information on the status of the proceedings concerned.
- (2) At the end of the proceedings in Bosnia and Herzegovina the authority that has accepted criminal proceedings shall notify through the Ministry of Justice of Bosnia and Herzegovina the requesting State of the outcome of the proceedings, and shall also forward, on its request, the final decision of the court.

## CHAPTER X. FINAL PROVISIONS

### **Article 93 (Cessation of validity of provisions of the Criminal Procedure Code of Bosnia and Herzegovina)**

(1) Upon the entry into force of this Law, the provisions of Chapter XXX and Chapter XXXI of the Criminal Procedure Code of Bosnia and Herzegovina shall cease to be valid.

(2) The provisions of the Entity Criminal Procedure Codes and the Criminal Procedure Code of Brčko District of Bosnia and Herzegovina referring to the mutual legal assistance procedure shall be brought in accordance with the provisions of this Law within six months from the entry into force of this Law.

### **Article 94 (Instruction on establishment of joint investigation teams)**

An Instruction on the establishment of joint investigation teams in accordance with Article 24 of this Law shall be issued by the Minister of Justice of Bosnia and Herzegovina within three months from the entry into force of this Law.

### **Article 95 (Implementing regulations on recording sanctions pronounced on nationals of Bosnia and Herzegovina abroad who were not born in Bosnia and Herzegovina)**

Implementing regulations on recording sanctions pronounced on nationals of Bosnia and Herzegovina abroad, who were not born in Bosnia and Herzegovina, in accordance with Article 30 of this Law, shall be issued by the Ministry of Security of Bosnia and Herzegovina, within three months from the entry into force of this Law.

### **Article 96 (The form for recording sanctions pronounced on convicted foreign nationals in Bosnia and Herzegovina)**

The form for recording sanctions pronounced on convicted foreign nationals in Bosnia and Herzegovina, in accordance with Article 29 of this Law, shall be issued by the Minister of Justice of Bosnia and Herzegovina, within 30 days from the entry into force of this Law.

### **Article 97 (*Mutatis mutandis* application of other regulations)**

Matters that are not specifically regulated by this Law and that concern provision of international legal assistance in criminal matters shall be subject to the provisions of the criminal procedure codes, the criminal codes, the minor offence laws and the laws on courts *mutatis mutandis*.

### **Article 98 (Transitional provisions)**

Extradition proceedings pending on the date of the entry into force of this Law shall be completed in accordance with the provisions of Chapter XXXI of the Criminal Procedure Code of Bosnia and Herzegovina.

### **Article 99 (Entry into force)**

This Law shall enter into force on the eighth date of the publication in the Official Gazette of Bosnia and Herzegovina,

PSBiH, No. 360/09 15 June, 2009, Sarajevo

Chairperson of the House of Representatives, Parliamentary Assembly of Bosnia and Herzegovina, Beriz Belkić, signed; Chairperson of the House of Peoples, Parliamentary Assembly of Bosnia and Herzegovina, Ilija Filipović, signed.

**CRIMINAL PROCEDURE CODE OF BOSNIA AND HERZEGOVINA** (enacted by decision of the High Representative of 24. 01.2003)

## **Chapter IV**

### **JURISDICTION OF THE COURT**

#### **Section 1 - MATERIAL JURISDICTION AND COMPOSITION OF THE COURT**

### **Article 23 - Material Jurisdiction of the Court**

(1) The Court shall have jurisdiction to:

- (a) adjudicate in first instance criminal matters within the scope of its material jurisdiction set forth by law;
- (b) decide appeals against first instance decisions;
- (c) decide the reopening of criminal proceedings in such instances as provided for under this Code;
- (d) decide any conflict of jurisdiction in criminal matters between courts of the Federation of Bosnia and Herzegovina and Republika Srpska and between courts of the Entities and the District of Brčko of Bosnia and Herzegovina;
- (e) decide any issue relating to international and inter-Entity criminal law enforcement, including relations with Interpol and other international police institutions, such as decisions on the transfer of convicted persons, and on the extradition and surrender of persons, requested from any authority in the territory of Bosnia and Herzegovina, by foreign states or international courts or tribunals;
- (f) carry out other tasks as stipulated by law.



(2) If a person committed several offenses and if the Court is competent with respect to one or more of them, while other courts are competent for the other offenses, in that case the priority shall be given to the trial before the Court.

**CRIMINAL PROCEDURE CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA** (in force 1 August 2003, Official Gazette<sup>7</sup> of the Federation of Bosnia and Herzegovina, 35/03)

### **Chapter III**

#### **LEGAL ASSISTANCE AND OFFICIAL CO-OPERATION**

##### **Article 21. Legal Assistance and Official Co-operation**

All courts of the Federation shall be bound to provide legal assistance to the court conducting a criminal proceeding.

All authorities of the Federation shall be bound to maintain official co-operation with courts, prosecutors and other bodies participating in criminal proceedings.

##### **Article 22. Rendering Legal Assistance**

The court shall file a request for legal assistance or official co-operation with the competent court or authority. Such legal assistance or official co-operation shall be provided without compensation.

Paragraphs 1 and 2 of this Article shall be applied to requests issued by the prosecutor to the prosecutor's office or other authorities of the Federation.

### **Chapter VIII**

#### **ACTIONS AIMED AT OBTAINING EVIDENCE**

##### **Section 1 - SEARCH OF DWELLINGS OR OTHER PREMISES AND PERSONS**

##### **Article 52. Search of Persons**

(1) The search of a person shall be permitted if it is likely that the person has committed a criminal offense or that through a search some objects or traces relevant to the criminal proceedings may be found with the person.

(2) The search of a person shall be conducted by a person of the same sex.

##### **Article 53. A Search Warrant**

(1) The court may issue a search warrant under the conditions provided by this Code.

(2) A search warrant may be issued by the court on the request of the prosecutor or on the request of authorized officials upon the approval of the prosecutor.

##### **Article 54. A Form of the Request for the Search Warrant**

A request for the issuance of a search warrant may be submitted in writing or orally. If the request is submitted in writing, it must be drafted, signed and certified in the manner stipulated in Article 55 Paragraph 1 of this Code.

The request for the issuance of a search warrant may be submitted in accordance with Article 56 of this Code.

##### **Article 55. Written Request for a Search Warrant**

(1) The request for a search warrant must contain:

- a) the name of the court and the name and title of the applicant;
- b) facts indicating the likelihood that the persons, or traces and objects referred to in Article 65 Paragraph 1 of this Code shall be found at the designated or described place, or with a certain person;
- c) a request that the court issue a search warrant in order to find the person in question or to forfeit the object.

(2) The request may also suggest that:

- a) a) the search warrant be made executable at any time of the day or night, because there is grounded suspicion that the search cannot be executed between the hours of 6:00 A.M. and 9:00 P.M., the property sought will be removed or destroyed if not seized immediately, or the person sought is likely to flee or commit another criminal offense or may endanger the safety of the executing authorized official or another person, if not seized immediately or between the hours of 9:00 P.M. and 6:00 A.M.;
- b) b) the authorized official execute the warrant without prior presentation of the warrant, when there is grounded suspicion to believe that the property sought may be easily and quickly destroyed if not seized immediately, the presentation of such warrant may endanger the safety of the executing authorized official or another person or the person sought may commit another criminal offense or endanger the safety of the executing authorized official or another person.

#### **Article 56. Oral Request for a Search Warrant**

(1) An oral request for a search warrant may be filed when there is danger in delay. An oral request for a search warrant may be communicated to the Court also by telephone, radio or other means of electronic communication.

(2) Where an oral request for a search warrant has been filed, the Court shall make record of the further course of conversation. In case of audio or shorthand recording, such record shall be submitted for transcription within 24 hours. The authenticity of the written records shall be certified and kept in files together with the original records.

#### **Article 57. The Issuance of a Search Warrant**

(1) If the preliminary proceedings judge determines that the request for a search warrant is justified, he shall grant the request and issue a search warrant.

(2) When the preliminary proceedings judge decides to issue a search warrant based upon an oral request, the applicant shall draft the warrant in accordance with Article 58 of this Code, and shall read it, verbatim, to the preliminary proceeding judge.

#### **Article 58. Contents of a Search Warrant**

A search warrant must contain:

- a) the name of the issuing court and, except where the search warrant has been obtained through an oral request, the signature of the preliminary proceedings judge who is issuing the warrant;
- b) where the search warrant has been obtained through an oral request, it shall so indicate and it shall state the name of the issuing judge and the time, date and place of issuance;
- c) the name, department or rank of the authorized person to whom it is addressed;
- d) the purpose of the search;
- e) a description of the person being sought or a description of the property that is the subject of the search;
- f) a description of the dwelling or other premises or person to be searched, by indicating the address, ownership, name or any other means essential for identification with certainty;
- g) a direction that the warrant be executed between hours of 6:00 A.M. and 9:00 P.M., or, where the court has specifically so determined, an authorization for execution thereof at any time of the day;
- h) an authorization, where the court has specifically so determined, for the executing authorized official to enter the premises to be searched without giving prior notice;
- i) a direction that the warrant and any property seized pursuant thereto be delivered to the court without delay;
- j) an instruction that the suspect is entitled to notify the defence attorney and that the search may be executed without the presence of the defence attorney if required by the extraordinary circumstances.

#### **Article 59. Time of Execution of a Search Warrant**

(1) A search warrant must be executed not later than 15 days from the day of its issuance and it must thereafter be returned to the court without delay.

(2) A search warrant may be executed on any day of the week. It may be executed only between the hours of 6:00 A.M. and 9:00 P.M., unless the warrant expressly authorizes execution thereof at any time of the day or night, as provided for in Article 55 Paragraph 2 of this Code.

#### **Article 60. Procedure of the Execution of a Search Warrant**

(1) Prior to the commencement of a search, an authorized official must give notice of his authority and of the purpose of his arrival and show the warrant to the person whose property is to be searched or who himself is to be searched. If the authorized official is not thereafter admitted, he may resort to use of force in accordance with law.

(2) In executing a search warrant that directs a search of a dwelling or other premises, an authorized official need not give notice to anyone of his authority and purpose, but may promptly enter the same, if such premises are at the time unoccupied or reasonably believed by the authorized official to be unoccupied or if the search warrant expressly authorizes entry without notice.

(3) The occupant of the dwelling or other premises shall be called to be present at the search, and if he is absent, his representative or an adult member of the household or a neighbour shall be called to be present. If the occupant of the dwelling or other premises is not present, the search warrant shall be left in the premise subject to search, and the search shall be conducted without the presence of the occupant.

(4) A search of the dwelling or other premises or of a person shall be witnessed by two adult citizens. Witnesses of the same gender shall be present at the search of a person. A search shall be conducted by the person of the same gender. Witnesses shall be instructed to pay attention as to how the search is conducted, and that they have the right to make comments before signing the record on the search if they believe that the content of the record is not truthful.

(6) In conducting a search of official premises, the manager or person in charge shall be called in to be present at the search.

(7) If a search is to be conducted in a military facility, a written search warrant shall be delivered to the military authority which shall assign at least one military person to be present at the search.

**Article 61. Execution of a Warrant to Search a Person**

In executing a search warrant directing or authorizing the search of a person, an authorized official must give notice of his authority and purpose to the person and must present the search warrant to the person to be searched. The authorized official may use physical force in accordance with law.

**Article 62. Records on Search**

(1) A record shall be made regarding every search of dwellings or other premises or of a person, and shall be signed by the person whose dwellings or other premises or who is being searched, and by the persons whose presence is mandatory. In executing a search, only those objects and documents that relate to the purpose of the search in that individual case shall be seized. The record shall include and clearly identify the objects and documents subject to seizure, which shall be indicated in a receipt immediately to be given to the person from whom the objects or documents are being seized.

(2) If, during a search of dwellings or other premises or a person, objects are found that are unrelated to the criminal offense for which the search warrant was issued, but indicate another criminal offense, they shall be described in the record and temporarily seized and a receipt on the seizure shall be issued immediately. The prosecutor shall be notified thereof. Those objects shall be returned immediately if the prosecutor establishes that there are no grounds for initiating criminal proceedings, and there is no other legal ground for seizing the objects.

(3) The objects used in the search of the computer and similar electronic devices for automated data processing shall be returned to their users after the search, unless they are required for the further conduct of the criminal proceedings. Personal data obtained by the search may be used only for the purpose of the criminal proceedings and shall be deleted immediately after the purpose is fulfilled.

**Article 63. Seizure of Objects under a Search Warrant**

(1) Upon seizure of objects pursuant to a search warrant, an authorized official must draft and sign a receipt indicating the objects seized and the name of the issuing court.

(2) If an object has been seized from a person, the receipt referred to in Paragraph 1 of this Article must be given to that person. If an object has been seized from a dwelling or other premises, such receipt must be given to the owner, tenant or user, as applicable.

(3) Upon seizing objects pursuant to a search warrant, an authorized official must, without delay, return the warrant and the property and an inventory of seized objects to the court.

(4) Upon receiving objects seized pursuant to a search warrant, the court shall either retain them in the custody of the court pending further disposition; or direct that they be held in the custody of the applicant for the warrant or of the authorized official who executed it.

**Article 64. Search without a Warrant and a witness**

(1) An authorized official may enter a dwelling or other premises without a warrant and without a witness and if necessary conduct a search if the tenant so desires, if someone calls for their help, if this is required to apprehend a suspect of a criminal offense who has been caught in the act, or for the sake of the safety of a person or property, if the person who is to be apprehended under the court order is in the dwelling or other premises or if the person is hiding in the dwelling or in other premises.

(2) An authorized official may search a person without a search warrant and without witnesses:

- a) when executing an apprehension warrant;
- b) when arresting the person;
- c) when there is suspicion that the person possesses a firearm or knife;
- d) when there is suspicion that the person will conceal or destroy objects that are to be taken from him and used as evidence in criminal proceedings.

(3) After an authorized official conducts a search without a search warrant and without the presence of a witness, he must immediately submit a report to the prosecutor, who shall inform the preliminary proceedings judge thereof. The report shall state the reasons why the search was completed without a warrant and a witness.

**Section 2 - SEIZURE OF OBJECTS AND PROPERTY**

**Article 65. Order for Seizure of Objects**

(1) Objects that are the subject of seizure pursuant to the Criminal Code or that may be used as evidence in the criminal proceedings shall be seized and their custody shall be secured pursuant to a court decision.

(2) The seizure warrant shall be issued by the court on the motion of the prosecutor or on the motion of authorized officials upon the approval of the prosecutor.

(3) The seizure warrant shall contain the name of the court, legal grounds for undertaking the action of seizure of objects, indication of the objects that are subject to seizure, the name of persons from whom objects are to be seized, the place where the objects are to be seized, a timeframe within which the objects are to be seized, and a notification of the right of the affected person to a legal remedy.

(4) The authorized official shall seize objects on the basis of the issued warrant.

(5) Anyone in possession of such objects must turn them over at the request of the court. A person who refuses to surrender objects may be fined in an amount up to 50.000 KM, and may be imprisoned if he persists in his refusal. Imprisonment shall last until the object is surrendered or until the end of criminal

proceedings, but no longer than 90 days. An official or responsible person in a governmental body or a legal entity shall be dealt with in the same manner.

(6) The provisions of Paragraph 5 of this Article shall also apply to the data stored in a computer or similar devices for automatic or electronic data processing. In obtaining such data, special care shall be taken with respect to regulations governing the maintenance of confidentiality of certain data.

(7) An appeal against a decision on a fine or on imprisonment shall be decided by the panel. An appeal against the decision on imprisonment shall not stay execution of the decision.

(8) When objects are seized, a note shall be made of the place where they were found, and they shall be described, and if necessary, establishment of their identity shall also be provided for in some other manner. A receipt shall be issued for seized objects.

(9) Forceful measures referred to in Paragraph 5 and 6 of this Article may not be applied to the suspect or accused or to persons who are exempt from the duty to testify.

#### **Article 66. Seizure without the Seizure Warrant**

(1) If there is danger in delay, the items referred to in Paragraph 1 of Article 65 of this Code may be seized even without the court order. If the person affected by the search explicitly opposes the seizure of items, the prosecutor shall, within 72 hours following the completion of the search, put forward to a preliminary proceedings judge a motion for a subsequent approval of the seizure of items.

(2) If the preliminary proceedings judge denies the prosecutor's motion, the items seized may not be used as evidence in the criminal proceedings. The seized items shall be immediately returned to the person from whom they have been seized.

#### **Article 67. Seizure of Mail and Telegrams and other Consignments**

(1) Seizure may be performed with respect to letters, telegrams and other mail addressed to or sent by the suspect or the accused and found with a company or persons engaged in postal and telecommunication activities.

(2) A seizure may also be performed with respect to the mail and telegrams referred to in Paragraph 1 of this Article when it can reasonably be expected that they shall serve as evidence in the proceedings.

(3) A warrant for the seizure of objects referred to in Paragraph 1 of this Article shall be issued by the court on the motion of the prosecutor.

(4) A warrant for the temporary seizure of objects may also be issued by the prosecutor, should there be danger in delay. Such warrant must, however, be confirmed by the preliminary proceedings judge within 72 hours following the seizure.

(5) If the warrant fails to be confirmed pursuant to the provision of the Paragraph 4 of this Article, the seized objects may not be used as evidence in the proceedings.

(6) The measures undertaken as provided under this Article shall not apply to the mail exchanged between the suspect or the accused and his defence attorney.

(7) The seizure warrant referred to in Paragraph 3 of this Article shall include: information on the suspect or the accused whom the warrant concerns, the manner of execution of the warrant and the duration of the measure, and the company that will execute the measure imposed. The measures taken may not last longer than three (3) months, but for an important reason, the preliminary proceedings judge may extend the measures for three (3) additional months. The measures taken shall, however, be terminated as soon as the reasons for taking them cease to exist.

(8) If the interests of the proceedings permit, the suspect or the accused who is the subject of the measures referred to in Paragraph 1 shall be informed of those measures taken.

(9) Mail delivered shall be opened by the prosecutor in the presence of two witnesses. In opening the mail, care shall be taken not to break the seal and the packaging and the address shall be kept. A record shall be made regarding the opening.

(10) The content of a part of the mail or the mail, as applicable, shall be communicated to the suspect or the accused or the recipient, and a part of the mail or the mail shall be handed over to that person, unless the prosecutor, exceptionally, considers the transfer to be detrimental to the success of the criminal proceedings. If the suspect or the accused is absent, his family members shall be notified of the mail delivery. If the suspect or the accused does not request the delivery of the mail thereafter, the mail shall be returned to the sender.

#### **Article 68. Written Inventory of Seized Objects and Documentation**

(1) After the seizure of objects and documentation, an inventory list of the seized objects and documents shall be made and a receipt concerning the objects and documents seized shall be given.

(2) If making an inventory list of objects and documentation is impossible, the objects and documentation shall be wrapped and sealed.

(3) Objects seized from a physical person or legal person may not be sold, given as a gift or otherwise transferred.

#### **Article 69. Right to Appeal**

The person from whom objects or documentation are seized shall have the right to appeal.

The appeal referred to in Paragraph 1 of this Article shall not stay the seizure of objects.

The prosecutor has the right to appeal a decision of the court pursuant to which the seized objects and documents are to be returned.

#### **Article 70. Safekeeping of Seized Objects and Documentation**

The seized objects and documentation shall be deposited with the court, or the court shall otherwise provide for their safekeeping.

#### **Article 71. Opening and Inspection of Seized Objects and Documents**

The opening and inspection of seized objects or documentation shall be done by the prosecutor.

The prosecutor shall be bound to notify the person or the business enterprise from which the objects were seized, the preliminary proceedings judge and the defence attorney about the opening of the seized objects or documentation.

When opening and inspecting the seized objects and documents, attention shall be paid that no unauthorized person gets the insight into their contents.

#### **Article 72. Order Issued to a Bank or to Another Legal Person**

(1) If there are grounds for suspicion that a person has committed a criminal offense related to the acquisition of material gain, the court may, at the motion of the prosecutor, issue an order to a bank or another legal person performing financial operations to turn over information concerning the bank accounts and other financial transactions of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.

(2) The Court may, on the motion of the prosecutor, order that other necessary measures referred to in Article 116 of this Code be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence about it.

(3) In case of an emergency, any of the measures under Paragraph 1 of this Article may be ordered by the prosecutor on the basis of an order. The prosecutor shall immediately inform the Court who shall issue a court warrant within 72 hours. The prosecutor shall seal the obtained information until the issuance of the court order. In case the Court fails to issue the said order, the prosecutor shall be bound to return such data without opening them.

(4) The court may issue a decision ordering a legal or physical person to temporarily suspend a financial transaction that is suspected to be a criminal offense or intended for the commission of the criminal offense, or suspected to serve as a disguise for a criminal offense or disguise of proceeds obtained through a criminal offense.

(5) The decision referred to in Paragraph 4 of this Article shall order that the financial resources designated for the transaction referred to in Paragraph 4 of this Article and cash amounts of domestic or foreign currency be seized pursuant to Article 65 Paragraph 1 of this Code and be deposited in a special account and kept until the end of the proceedings or until the conditions for their return are met.

(6) An appeal may be filed against a decision referred to in Paragraph 4 of this Article by the prosecutor, the owner of the assets or cash in domestic or foreign currency, the suspect, the accused and the legal or physical person referred to in Paragraphs 4 and 5 of this Article.

#### **Article 72.a. Order to the telecommunications operator**

(1) If there are grounds for suspicion that a person has committed a criminal offence, the Court may, upon a motion by the Prosecutor or authorised officials who have been given the Prosecutor's approval, order that the telecommunications operator or another legal person providing telecommunications services submit information on the use of the telecommunication services by that person, if such information could be evidence in criminal proceedings or serve to collect information that can be of use in criminal proceedings.

(2) In urgent cases, the Prosecutor may order the actions referred to in paragraph (1) of this article and the information received shall be sealed, until a court order has been issued. The Prosecutor shall immediately notify the preliminary proceedings judge about the actions taken, who may issue the order within 72 hours. In the case that the preliminary proceedings judge does not issue the order, the Prosecutor shall return the information without having opened the seal.

(3) The actions referred to in paragraph (1) of this article may be ordered against the person about whom there are grounds for suspicion that he or she transmits, to or from the perpetrator the information concerning the criminal offence or that the perpetrator uses his or her means of telecommunication.

(4) The telecommunications operators or another legal person providing telecommunications services shall allow the Prosecutor and police authorities the implementation of the measures referred to in paragraph (1) of this article.

#### **Article 73. Seizure of Property**

(1) At any time during the proceedings, the court may, upon the motion of the prosecutor, order a temporary measure seizing the illicitly gained property under the Criminal Code, arrest in property or shall take other necessary temporary measures to prevent any use, transfer or disposal of such property.

(2) If there is danger in delay, an authorized official may seize property referred to in Paragraph 1 of this Article, may carry out an arrest in property or take other necessary temporary measures to prevent any use, transfer or disposal of such property. An authorized official shall immediately inform the prosecutor about the

measures taken and the measures taken must be confirmed by the preliminary proceedings judge within 72 hours following the undertaking of the measures.

(3) If the court denies the approval, the measures taken shall be terminated and the objects or property seized returned immediately to the person from whom they have been seized.

#### **Article 74. Return of the Seized Objects**

Objects that have been seized during the criminal proceedings shall be returned to the owner or possessor once it becomes evident during the proceedings that their retention runs contrary to Article 79 of this Code and that there are no reasons for their seizure (Article 391).

### **Section 3 – Procedure of dealing with suspicious objects**

#### **Article 75. Posted and Published Description of the Suspicious Objects**

(1) If another person's object is found with the suspect or the accused and it is not known to whom it belongs, the authorised body conducting the proceedings shall describe the object and post the description on the notice boards of the municipality of the residence of the suspect or the accused and the municipality where the criminal offence has been committed. The notice shall invite the owner to come forward within one (1) year from the date of the posting; otherwise, the object will be sold. The proceeds from the sale shall be credited to the Bosnia and Herzegovina budget.

(2) If the object is of high value, a description may also be published in a daily newspaper.

(3) If the object is perishable or its safekeeping would entail significant costs, the object shall be sold pursuant to the provisions governing the judicial enforcement procedure and the proceeds shall be delivered for safekeeping to the Court.

(4) The provision of Paragraph 3 of this Article shall also be applied when the object belongs to a runaway or an unknown perpetrator of a criminal offence.

#### **Article 76. Decisions on Suspicious Objects**

(1) If, within one (1) year, no one comes forward as the owner of the object or of the proceeds from the sale of the object, a decision shall be taken that the object shall become property of Bosnia and Herzegovina or that the proceeds shall be credited to the Bosnia and Herzegovina Budget.

(2) The owner of the object shall be entitled to request in civil proceedings to repossess the object or to possess the proceeds from the sale of the object. The statute of limitations with respect to this right shall start running from the date of the posting or publication, as appropriate.

### **Section 4 - QUESTIONING OF THE SUSPECT**

#### **Article 77. Basic Provisions on Questioning**

(1) The suspect shall be questioned by the prosecutor or an authorised official person.

(2) The questioning of the suspect must be done with full respect to the personal integrity of the suspect.

(3) If actions were taken contrary to the provisions of paragraph (2) of this Article, the decision of the Court may not be based on the statement of the suspect.

#### **Article 78. Instructing the Suspect on His Rights**

(1) At the first questioning, the suspect shall be asked the following questions: his name and surname; nickname if he has one; name and surname of his parents; maiden name of his mother; place of birth; place of residence; date, month and year of birth; ethnicity and citizenship; identification number of Bosnia and Herzegovina citizen; profession; family situation; is he literate; completed education; has he served in the army, and if so, when and where; whether he has a rank of a reserve officer; whether he is entered in the military records and if yes with which authority in charge of defence affairs; whether he has received a medal; financial situation; previous convictions and, if any, reasons for the conviction; if convicted whether he has served the sentence and when; are there ongoing proceedings for some other criminal offense; and if he is a minor, who is his legal representative. The suspect shall be instructed to obey summonses and to inform the authorized officials immediately about every change of address or intention to change his residence, and the suspect shall also be instructed about consequences if he does not act accordingly.

(2) At the beginning of the questioning, the suspect shall be informed of the criminal offense he is suspected of, the grounds for the suspicion and he shall be informed of the following rights:

- a) the right not to present evidence or answer questions;
- b) the right to retain a defence attorney of his choice who may be present at questioning and the right to a defence attorney at no cost in such cases as provided by this Code;
- c) the right to comment on the suspicion against him, and to present all facts and evidence in his favour and, if he does so in the presence of the defence attorney, that such his statement is admissible at the main trial and that it can be read and used in the main trial without his consent,
- d) that during the investigation, he is entitled to study files and view the collected items in his favour unless the files and items concerned are such that their disclosure would endanger the aim of investigation;
- e) the right to an interpreter service at no cost if the suspect does not understand the language used for questioning.

(3) The suspect may voluntarily waive the rights stated in Paragraph 2 of this Article but his questioning may not commence unless his waiver has been recorded officially and signed by the suspect. To waive the right to a defence attorney shall not be possible for the suspect under any circumstances in case of a mandatory defence under this Code.

(4) In the case when the suspect has waived the right to a defence attorney, but later expressed his desire to retain one, the questioning shall be immediately suspended and shall resume when the suspect has retained or has been appointed a defence attorney, or if the suspect has expressed a wish to answer the questions.

(5) If the suspect has voluntarily waived the right not to answer the questions asked, he must be allowed to present views on all facts and evidence that speak in his favour.

(6) If any actions have been taken contrary to the provisions of this Article, the court's decision may not be based on the statement of the suspect.

#### **Article 79. Manner of Questioning of the Suspect**

(1) A record shall be made on every questioning of the suspect. The important parts of the statement shall be entered in the record word for word. After the record has been completed, the record shall be read to the suspect and the copy of it shall be given to him.

(2) As a rule, the questioning of a suspect shall be audio or video recorded under the following conditions: the suspect shall be informed in the language he speaks and understands that the questioning is being audio or video recorded;

a. if the questioning is adjourned, the reason and time of the adjournment shall be indicated in the record, as well as the time of resumption and the completion of the hearing;

b. at the end of the questioning, the suspect shall be allowed to explain whatever he has said and to add whatever he wants;

c. the tape record thus made shall be transcribed after the completion of the questioning, and a copy of the d) transcript shall be handed to the suspect along with a copy of the tape recording, or if a device for making several records simultaneously was used, he shall be handed one of the originals;

d. once a copy of the original tape has been made for the purpose of making a transcript, the original tape or one of the originals shall be sealed off in the presence of the suspect and authenticated by the respective signatures of the authorized official and the suspect.

#### **Article 80. Questioning through an Interpreter**

The suspect shall be questioned through an interpreter in cases referred to in Article 87 of this Code.

### **Section 5 - EXAMINATION OF WITNESSES**

#### **Article 81. Summons to Examine Witnesses**

(1) Witnesses shall be heard when there is likelihood that their statements may provide information concerning the offense, the perpetrator or any other important circumstances.

(2) The prosecutor or the court shall serve the summons. Any summoning of a minor under 16 as the witness shall be done through the parents or legal representative, except for the cases where this is not possible due to a need to act urgently, or other circumstances as the prosecutor or the court considers important.

(3) Witnesses who cannot answer a summons because of age, illness or serious physical handicaps may be questioned at their residence, hospital or any other place.

(4) Witnesses shall be notified in the summons of their being summoned as a witness, of where and when to appear upon being summoned, as well as what consequences shall follow if the witness fails to appear.

(5) Should the witness fail to appear or justify his absence the court may fine him in an amount up to 5.000 KM, or may order the apprehension of the witness.

(6) The apprehension of a witness shall be performed by the Judicial Police. Exceptionally, the order may be given by the prosecutor if a duly summoned witness does not appear or justify his absence, provided that this order must be confirmed by the preliminary proceedings judge within 24 hours following the issuance of the order.

(7) Should the witness refuse to testify, the court may, at the proposal of the prosecutor, issue a decision on fining the witness who has been warned of the consequences, without legal reasons in an amount up to 30.000 KM. An appeal against this decision shall be allowed, but shall not stay the execution of the decision.

(8) Appeals against a decision referred to in Paragraphs (5) and (7) of this Article shall be decided by the Panel (Article 24, Paragraph (7)).

### **Chapter IX. SPECIAL INVESTIGATIVE ACTIONS**

#### **Article 116. Types of Special Investigative Actions and Conditions of Their Application**

(1) If evidence cannot be obtained in any another way or its obtaining would be accompanied by disproportional difficulties, special investigative measures may be ordered against a person against whom there are grounds for suspicion that he has committed or has along with other persons taken part in committing or is participating in the commission of an offense referred to in Article 131 of this Code.

(2) Measures referred to in Paragraph 1 of this Article are as follows:

a) surveillance and technical recording of telecommunications;

- b) access to computer systems and computerized data processing;
  - c) surveillance and technical recording of premises;
  - d) covert following and technical recording of individuals, means of transport and objects in relation to them;
  - e) use of undercover investigators and informants;
  - f) simulated and controlled purchase of certain objects and simulated bribery;
  - g) supervised transport and delivery of the objects of a criminal offense.
- (3) Measures referred to in Item a) of Paragraph 2 of this Article may also be ordered against persons against whom there are grounds for suspicion that he will deliver to the perpetrator or will receive from the perpetrator of the offenses referred to in Article 117 of this Code information in relation to the offenses, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to those persons.
- (4) Provisions regarding the communication between the suspect and his or her defence attorney shall apply accordingly to the discourse between the person referred to in Paragraph 1 of this Article and his or her defence attorney.
- (5) In executing the measures referred to in Items e) and f) of Paragraph 2 of this Article police authorities or other persons shall not undertake activities that constitute an incitement to commit a criminal offense. If nevertheless such activities are undertaken, this shall be an instance precluding the criminal prosecution against the incited person for a criminal offense committed in relation to those measures.
- (6) An undercover investigator is a specially trained authorised official person who investigates using a changed identity. An undercover investigator in his changed identity may participate in legal transactions. If necessary for the establishment and maintenance for such identity, relevant documents may be produced, modified or used.

#### **Article 117. Criminal Offenses as to Which Special Investigative Measures May Be Ordered**

Measures referred to in Article 2, Paragraph 2 of this Law may be ordered for following criminal offences:

- 1.) criminal offences against the integrity of Bosnia and Herzegovina,
- 2.) criminal offences against humanity and values protected under international law;
- 3.) criminal offences of terrorism;
- 4.) criminal offences for which, pursuant to the law, a prison sentence of minimum of three (3) years or more may be pronounced.

#### **Article 118. Competence to Order the Measures and the Duration of the Measures**

- (1) Measures referred to in Article 116 Paragraph 2 of this Code shall be ordered by the preliminary proceedings judge in an order upon the properly reasoned motion of the prosecutor containing: the data on the person against whom the measure is to be applied, the grounds for suspicion referred to in Paragraphs 1 or 3 of Article 116 of this Code, the reasons for undertaking the measures and other important circumstances necessitating the application of the measures, the reference to the type of required measure and the method of its implementation and the extent and duration of the measure. The order shall contain the same data as those featured in the prosecutor's motion as well as ascertainment of the duration of the measure ordered.
- (2) Exceptionally, if a written order cannot be received in due time and if there is danger in delay, the execution of a measure referred to in Article 116 of this Code may commence on the basis of a verbal order pronounced by the preliminary proceeding judge. The written order of the court must be obtained within 24 hours following the issue of the verbal order.
- (3) Measures referred to in Items a), through d) and g) of Paragraph 2 of Article 116 of this Code may last up to one (1) month, while on account of particularly important reasons the duration of such measures may upon a properly reasoned motion of the prosecutor be prolonged for a term of another month, provided that the measures referred to in items a), b) and c) may last up to six (6) months in total, while the measures referred to in items d) and g) may last up to three (3) months in total. The motion as to the measure referred to in Item f) of Paragraph 2 of Article 116 may refer only to a single act, whereas a motion as to each subsequent measure against the same person must contain a statement of reasons justifying its application.
- (4) The order of the preliminary proceeding judge and the motion of the prosecutor referred to in Paragraph 1 of this Article shall be kept in a separate envelope. By compiling or transcribing the records without making references to the personal data therein about the undercover investigator and informant, or in another appropriate way, the prosecutor and the preliminary proceedings judge shall prevent unauthorized persons as well as the suspect and his defence attorney from establishing the identity of the undercover investigator and of informant.
- (5) By means of a written order the preliminary proceedings judge must suspend forthwith the execution of the undertaken measures if the reasons for previously ordering the measures have ceased to exist.
- (7) The orders referred to in Paragraph 1 of this Article shall be executed by the police authorities.
- (8) Companies performing the transmission of information shall be bound to enable the prosecutor and police authorities to enforce the measures referred to in Item a) of Paragraph 2 of Article 116 of this Code.

#### **Article 119. Materials Received through the Measures and Notification of the Measures Undertaken**

- (1) Upon the completion of the application of the measures referred to in Article 116 of this Code, all information, data and objects obtained through the application of the measures as well as a report must be submitted by police authorities to the prosecutor. The prosecutor shall be bound to provide the preliminary proceedings judge with a written report on the measures undertaken. On the basis of the submitted report the preliminary proceedings judge shall evaluate the compliance with his order.



(2) Should the prosecutor refrain from prosecution, or should the data and information obtained through the application of the ordered measures not be needed for the criminal proceedings, they shall be destroyed under the supervision of the preliminary proceedings judge, of which event he shall make separate records. The person against whom any of the measures referred to in Article 116 Paragraph 2 of this Code were undertaken, shall be notified of the undertaking of the measures, the reasons for their undertaking and information stating that the received materials did not constitute sufficient grounds for criminal prosecution and were thereafter destroyed.

(3) The preliminary proceedings judge shall forthwith and following the undertaking of the measures referred to under Article 130 of this Code inform the person against whom the measures were undertaken. That person may request from the court a review of legality of the order and of the method by which the order was enforced.

(4) Data and information received through the undertaking of the measures referred to in Paragraph 2 of Article 116 of this Code shall be stored and kept as long as the court file is being kept.

#### **Article 120. "Incidental Findings"**

No data or information received through the undertaking of actions referred to in Article 116 of this Code shall be used as evidence if they are not related to a criminal offense referred to in Article 117 of this Code.

#### **Article 121. Acting Without a Court Order or Beyond Its Extent**

If the measures referred to in Article 116 of this Code have been undertaken without the order of the preliminary proceedings judge or against the same, the court cannot base its decision on the data or evidence thereby obtained.

#### **Article 122. Admissibility of Evidence Obtained through the Undertaking of Special Measures**

Technical recordings, documents and objects obtained as provided under the conditions and in the manner prescribed by this Code may be used as evidence in the criminal proceedings. The undercover investigator and informant referred to in Article 130 Paragraph 2 Item e) and the persons who have undertaken the measures referred to in Article 116 Paragraph 2 Item f) of this Code may be questioned as witnesses or as protected witnesses on the course of the undertaking of the measures or on other important circumstances.

### **CRIMINAL PROCEDURE CODE OF REPUBLIKA SRPSKA (1 July 2003)**

#### **Chapter VIII. ACTIONS TO OBTAIN EVIDENCE**

##### **1. SEARCH OF DWELLINGS OR OTHER PREMISES AND PERSONS**

#### **Article 115. Search of dwellings, other premises and personal property**

(1) A search of dwellings and other premises of the suspect, accused or other persons, as well as his personal property outside the dwelling may be conducted only when there are sufficient grounds for suspicion that the perpetrator, the accessory, evidence of a certain criminal offense or objects relevant to the criminal proceedings are located at the specific place.

(2) The search of personal property pursuant to Paragraph 1 of this article shall include a search of the computer and similar devices for automatic data processing connected with it. At the request of the court, the person using such devices is obliged to allow access to them, to hand over diskettes and magnetic tapes or other forms of saved data, as well as to provide necessary information concerning the use of the devices. A person, who refuses to do so, without cause for reasons that are referred to in Article 148 of this Code, may be punished under the provision of Article 129 Paragraph 5 of this Code.

(3) The search of computers and similar devices under paragraph 2 of this article shall be conducted by an information technology expert.

#### **Article 116. Search of Persons**

(1) The search of a person shall be permitted if it is likely that the person has committed a criminal offense or that through a search some objects or evidence relevant to the criminal proceedings may be found on that person.

(2) The search of a person shall be conducted by a person of the same sex.

#### **Article 117. A Search Warrant**

(1) The court may issue a search warrant under the conditions provided by this Code.

(2) A search warrant may be issued by the court at the request of the prosecutor or at the request of authorized officials having obtained an approval by the prosecutor.

#### **Article 118. A Form of the Request for the Search Warrant**

A request for the issuance of a search warrant may be submitted in writing or orally. If the request is submitted in writing, it shall be drafted, signed and certified in the manner as defined in Article 117 Paragraph 1 of this Code.

The request for the issuance of a search warrant may be submitted in accordance with Article 120 of this Code.

#### **Article 119. Contents of the Request for a Search Warrant**

(1) The request for a search warrant must contain:

- a) the name of the court and the name and title of the requesting official;
- b) facts indicating the likelihood that the persons, evidence and objects referred to in Article 114 Paragraph 1 of this Code will be found at the designated or described place, or with a certain person;
- c) a request that the court issue a search warrant in order to find the person in question or to seize items.

(2) The request may also suggest that:

- a) the search warrant be enforceable at any time of the day or night, where there is grounded suspicion that if the search is not conducted between the hours of 6:00 A.M. and 9:00 P.M., the property sought will be removed or destroyed if not seized immediately, or the person sought is likely to flee or commit another criminal offense or may endanger the safety of the executing authorized official or another person, if the search warrant is not enforced immediately or between the hours of 9:00 P.M. and 6:00 A.M.;
- b) the executing authorized official enforce the warrant without prior presentation of the warrant, when there is grounded suspicion to believe that the property sought may be easily and quickly destroyed if not seized immediately, the presentation of such warrant may endanger the safety of the executing authorized official or another person or the person sought is likely to commit another criminal offense or may endanger the safety of the executing authorized official or another person.

#### **Article 120. Oral Request for a Search Warrant**

(1) An oral request for a search warrant may be filed when a delay would be detrimental. An oral request for a search warrant may be communicated to a preliminary proceedings judge also by telephone, radio or other means of electronic communication.

(2) Upon being advised that an oral request for a search warrant is being made, the preliminary proceedings judge shall record all of the remaining communication. If a voice recording device is used or a stenographic record made, the preliminary proceedings judge must have the record transcribed, certify the accuracy of the transcription and file the original record and transcript with the court within 24 hours of the issuance of the warrant. If longhand notes are taken, the judge shall sign a copy and file it with the court within 24 hours of the issuance of the warrant.

#### **Article 121. The Issuance of a Search Warrant**

(1) If the preliminary proceedings judge determines that the request for a search warrant is justified, he shall grant the request and issue a search warrant.

(2) When the preliminary proceedings judge decides to issue a search warrant based upon an oral request, the requesting official shall draft the warrant in accordance with Article 122 of this Code, and shall read it all to the preliminary proceedings judge.

#### **Article 122. Contents of a Search Warrant**

A search warrant must contain:

- a) the name of the issuing court and, except where the search warrant has been obtained through an oral request, the signature of the preliminary proceedings judge who is issuing the warrant;
- b) where the search warrant has been obtained through an oral request, it shall so indicate and it shall state the name of the issuing judge and the time, date and place of issuance;
- c) the purpose of the search;
- d) the name, department or rank of the authorized official to whom it is addressed;
- e) a description of the person being sought or a description of the property that is the subject of the search;
- f) a description of the dwelling or other premises or person to be searched, by indicating the address, ownership, name or any other indicators essential for identification with certainty;
- g) a direction that the warrant be executed between hours of 6:00 A.M. and 9:00 P.M., or, where the court has specifically so determined, an authorization for execution thereof at any time of the day;
- h) an authorization, where the court has specifically determined, for the executing authorized official to enter the premises to be searched without giving prior notice;
- i) a direction that the warrant and any property seized pursuant thereto be delivered to the court without delay;
- j) an instruction that the suspect is entitled to notify the defence attorney and that the search may be conducted without the presence of the defence attorney if required by the extraordinary circumstances.

#### **Article 123. Time of the Enforcement of a Search Warrant**

(1) A search warrant must be executed not later than 72 days from the day of its issuance and it must thereafter be returned to the court without delay.

(2) A search warrant may be executed on any day of the week. It may be executed only between the hours of 6:00 A.M. and 9:00 P.M., unless the warrant expressly authorizes execution thereof at any time of the day or night, as provided in Article 119 Paragraph 2 this Code.

#### **Article 124. Procedure of the Enforcement of a Search Warrant**

(1) Prior to the commencement of a search an authorized official shall give notice of his authority and of the purpose of his arrival and show the warrant to the person whose property is to be searched or who himself is

to be searched. If the authorized official is not thereafter admitted, he may resort to the use of force in accordance with the law.

(2) In executing a search warrant that directs a search of a dwelling or other premises, an authorized official need not give notice to anyone of his authority and purpose, but may promptly enter the same, if such premises or vehicle is at the time unoccupied or reasonably believed by the authorized official to be unoccupied and if the search warrant expressly authorizes entry without notice.

(3) The occupant of the dwelling or other premises shall be called to be present at the search, and if he is absent, his representative or an adult member of the household or a neighbour shall be called to be present. If the occupant of the dwelling or other premises is not present, the search warrant shall be left in the premise subject to search, and the search shall be conducted without the presence of the occupant.

(4) A search of the dwelling or other premises or of the person shall be witnessed by two adult citizens. Witnesses of the same gender shall be present at the search of the person. Witnesses shall be instructed to pay attention as to how the search is conducted, and that they have the right to make comments before signing the record on the search if they believe that the content of the record is not truthful.

(5) In conducting a search of official premises, the manager or person in charge shall be called in to be present at the search.

(6) If a search is to be conducted in a military facility, a written search warrant shall be delivered to the military authority who shall assign at least one military person to be present at the search.

#### **Article 125. Duties and Powers of an Authorized Official**

In executing a search warrant directing or authorizing the search of a person, an authorized official must give notice of his authority and purpose to the person and must produce the warrant to the person to be searched. The authorized official may use physical force in accordance with the law.

#### **Article 126. Record of Search**

(1) A record shall be made regarding every search of dwellings or other premises or person, which shall be signed by the person whose dwellings or other premises are or who is being searched and the persons, whose presence is mandatory. In executing a search, only those objects and documents shall be seized that relate to the purpose of the search in that individual case. The record shall include and clearly identify the objects and documents that are the subject of seizure, which shall be indicated in a receipt immediately to be given to the person from whom the objects or documents are being seized.

(2) If, during a search of dwellings or other premises or a person, objects are found that are unrelated to the criminal offense for which the search warrant was issued, but indicate another criminal offense, they shall be described in the record and temporarily seized and a receipt on the seizure shall be issued immediately. The prosecutor shall be notified thereof. Those objects shall be returned immediately if the prosecutor establishes that there are no grounds for initiating criminal proceedings, and there is no other legal ground for seizing the objects.

(3) The objects used in the search of the computer and similar electronic devices for automatic data processing shall be returned to their users after the search, unless they are required for the further conduct of the criminal proceedings. Personal data obtained by the search may be used only for the purpose of the criminal proceedings and shall be deleted immediately after the purpose is fulfilled.

#### **Article 127. Seizure of Objects under a Search Warrant**

(1) Upon temporary seizure of objects pursuant to a search warrant, an authorized official must draft and sign a receipt indicating the objects seized and the name of the issuing court.

(2) If an object has been temporarily seized from a person, the receipt referred to in Paragraph 1 of this Article must be given to that person. If an object has been seized from a dwelling or other premises, such receipt must be given to the owner, tenant or user, as applicable.

(3) Upon seizing objects pursuant to a search warrant, an authorized official must, without unnecessary delay, return to the court the warrant and the property, and must file therewith a written inventory of the seized objects.

(4) Upon receiving objects seized pursuant to a search warrant, the court shall keep them in the custody of the court pending further disposition.

#### **Article 128. Search without Warrant**

(1) An authorized official may enter a dwelling or other premises without a warrant and without a witness and, if necessary, conduct a search if the occupant so desires, if someone calls for their help, if this is required to apprehend a suspect of a criminal offense who has been caught in the act, or for the sake of the safety of a person or property, if the person who is to be apprehended by the court order is in the dwelling or other premises or if the person is hiding in the dwelling or in other premises.

(2) An authorized official may search a person without a search warrant and without witnesses:

- a) when executing an apprehension warrant;
- b) when arresting the person;
- c) when there is suspicion that the person possesses a firearm or knife;
- d) when there is suspicion that he will conceal or destroy articles that are to be seized and used as evidence in criminal proceedings.

(3) After an authorized official conducts a search without a search warrant, he must immediately submit a report to the prosecutor, who shall inform the preliminary proceedings judge of the search. The report shall state the reasons why the search was completed without a warrant.

## **2. Seizure of Objects and Property**

### **Article 129. Warrant for Seizure of Objects**

(1) Objects that are the subject of seizure pursuant to the Criminal Code or that may be used as evidence in the criminal proceedings shall be seized temporarily and their custody shall be secured pursuant to a court decision.

(2) The seizure warrant shall be issued by the preliminary proceedings judge on the motion of the prosecutor or on the motion of authorized officials approved by the prosecutor.

(3) The seizure warrant shall contain the name of the court, legal grounds for undertaking the action of seizure of objects, indication of the objects that are subject to seizure, the name of persons from whom objects are to be seized, the place where the objects are to be seized, a timeframe within which the objects are to be seized, and notification of the right of the affected person to a legal remedy.

(4) The authorized official shall seize objects on the basis of the issued warrant.

(5) Anyone in possession of such objects must turn them over at the request of the preliminary proceedings judge. A person who refuses to surrender articles may be fined in an amount up to 50,000 KM, and may be imprisoned if he persists in his refusal. Imprisonment shall last until the article is surrendered or until the end of criminal proceedings, but no longer than 90 days. The same provisions shall apply to an official or responsible person in a state body or a legal entity.

(6) The provisions of Paragraph 5 of this Article shall also apply to the data stored in devices for automated or electronic data processing. In obtaining such data, special care shall be taken with respect to regulations governing the maintenance of confidentiality of certain data.

(7) An appeal against a decision on fine or on imprisonment shall be decided by the panel (article 24 paragraph 5). The appeal shall not stay execution of the decision.

(8) When articles are seized, a note shall be made of the place where they were found, and they shall be described, and if necessary, establishment of their identity shall also be provided for in some other manner. A receipt shall be issued for articles seized.

(9) Forceful measures referred to in Paragraph 5 and 6 of this article may not be applied to the suspect or the accused or to persons who are exempted from the duty to testify.

### **Article 130. Seizure without Seizure Warrant**

(1) If a delay would be detrimental, items referred to in Paragraph 1 of Article 129 of this Code may be seized even without the court order. If the person affected by the search explicitly opposes the seizure of items, the prosecutor shall, within 48 hours following the completion of the search, file to a preliminary proceedings judge a motion for a subsequent approval of the seizure of items.

(2) If the preliminary proceedings judge denies the prosecutor's motion, the items seized may not be used as evidence in the criminal proceedings. The seized items shall be immediately returned to the person from whom they have been seized.

### **Article 131. Seizure of Mail and Telegrams and other Consignments**

(1) Seizure may be performed with respect to the mail and telegrams that are addressed to or sent by the suspect or the accused and that are found with a company or persons engaged in postal and telecommunication activities.

(2) The seizure may also be performed with respect to the mail and telegrams referred to in Paragraph 1 of this Article when it can reasonably be expected that they shall serve as evidence in the proceedings.

(3) A seizure warrant for the temporary seizure of objects referred to in Paragraph 1 of this Article shall be issued by the preliminary proceedings judge on the motion of the prosecutor.

(4) A warrant for the temporary seizure of objects may also be issued by the prosecutor, if a delay would be detrimental. Such warrant must, however, be confirmed by the preliminary proceedings judge within 72 hours following the seizure.

(5) If the warrant fails to be confirmed pursuant to the provision of the Paragraph 4 of this Article, the seized objects may not be used as evidence in the proceedings.

(6) The measures undertaken as provided under this Article shall not apply to the mail exchanged between the suspect or the accused and his or her defence attorney.

(7) A seizure warrant referred to in Paragraph 3 of this Article shall include: information on the suspect or the accused whom the warrant concerns, the manner of execution of the warrant and the duration of the measure, and the company that will execute the measure imposed. The measures taken may not last longer than three (3) months, but for an important reason, the preliminary proceedings judge may extend the measures for three (3) additional months. The measures taken shall, however, be terminated as soon as the reasons for taking them cease to exist.

(8) Without prejudice to the interest of conducting criminal proceeding, the suspect or the accused who is the subject of the measures referred to in Paragraph 1 shall be informed of those measures taken.

(9) Mail delivered shall be opened by the prosecutor in the presence of two witnesses. In opening the mail, care shall be taken not to break the seal and the packaging and the address shall be kept. A record shall be made regarding the opening.

(10) The content of a part of the mail or the mail, as applicable, shall be communicated to the suspect or the accused or the recipient, and a part of the mail or the mail shall be handed over to that person, unless the prosecutor, exceptionally, considers the transfer to be detrimental to the success of the criminal proceedings. If the suspect or the accused is absent, his family members shall be notified of the mail delivery. If the suspect or the accused does not request the delivery of the mail thereafter, the mail shall be returned to the sender.

#### **Article 132. A Written Inventory of the Seized Objects and Documents**

(1) After the seizure of objects and documentation, an inventory list of the temporarily seized objects and documents shall be made and a receipt concerning the objects and documents seized shall be written.

(2) If making an inventory list of objects and documentation is impossible, the objects and documentation shall be wrapped and sealed.

(3) Objects seized from a physical person or legal person may not be sold, given as a gift or otherwise transferred.

#### **Article 133. Right to Appeal**

(1) The person from whom objects or documentation are seized shall have the right to appeal.

The filing of an appeal referred to in Paragraph 1 of this Article shall not stay the temporary seizure of objects.

(2) The appeal referred to in Paragraph 1 of this Article shall be decided by the Panel referred to in Article 24, Paragraph 5 of this Code.

(3) The prosecutor has the right to appeal against the decision of the court by which the seized objects and documents are to be returned.

#### **Article 134. Safekeeping of the Seized Objects and Documents**

The seized objects and documentation shall be deposited with the court, or the court shall otherwise provide for their safekeeping.

#### **Article 135. Opening and Inspection of the Seized Objects and Documents**

(1) The opening and inspection of the seized objects or documentation shall be done by the prosecutor.

(2) The prosecutor shall notify the person or the business enterprise from which the objects were seized, the preliminary proceedings judge and the defence attorney about the opening of the seized objects or documentation.

(3) When opening and inspecting the seized objects and documents, attention shall be paid that no unauthorized person gets the insight into their contents.

#### **Article 136. Order Issued to a Bank or to Another Legal Person**

(1) If there are grounds for suspicion that a person has committed a criminal offense related to acquisition of material gain, the preliminary proceedings judge may at the motion of the prosecutor issue an order to a bank or another legal person performing financial operations to disclose information concerning the bank accounts of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.

(2) The preliminary proceedings judge may, on the motion of the prosecutor, order that other necessary measures referred to in Article 226 of this Code be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence thereupon.

(3) In case of an emergency, any of the above mentioned measures may be ordered by the prosecutor on the basis of an order. The prosecutor shall immediately inform the preliminary proceedings judge who shall issue a court warrant within 72 hours. The prosecutor shall seal the obtained information until the issuance of the court warrant. In case the preliminary proceedings judge fails to issue the said warrant, the prosecutor shall be bound to return such information without having an access to it.

(4) The court may issue a decision ordering a legal or physical person to temporarily suspend a financial transaction that is suspected to be a criminal offense or intended for the commission of the criminal offense, or suspected to serve to conceal a criminal offense or conceal the proceeds of crime.

(5) The decision referred to in the previous Paragraph shall order that the financial resources designated for the transaction referred to in Paragraph 4 of this Article and cash amounts of domestic or foreign currency be temporarily seized pursuant to Article 129 Paragraph 1 of this Code and be deposited in a special account and kept until the end of the proceedings or until the conditions for their return are met.

(6) An appeal may be filed against the decision referred to in Paragraph 4 of this Article by the prosecutor, the owner of the cash in domestic or foreign currency, the suspect, the accused and the legal or physical person referred to in Paragraphs 4 and 5 of this Article.

#### **Article 137. Temporary Seizure of Illicitly Gained Property**

(1) At any time during the proceedings, the court may, upon the motion of the prosecutor, issue an interlocutory order for seizure, confiscation or arrest of illicitly gained property under the Criminal Code or shall issue other necessary interlocutory orders to prevent any use, transfer or disposal of such property.

(2) If a delay would be detrimental, an authorized official may temporarily seize property referred to in Paragraph 1 of this Article, may carry out an arrest in property or take other necessary temporary measures to prevent any use, transfer or disposal of such property. An authorized official shall immediately inform the prosecutor about the measures taken and the measures taken must be confirmed by the preliminary proceedings judge within 72 hours following the undertaking of the measures.

(3) If the preliminary proceedings judge denies the approval, the measures taken shall be terminated and the objects or property seized returned immediately to the person from whom they have been seized.

#### **Article 138. Return of the Seized Property**

Objects that have been seized during the criminal proceedings shall be returned to the owner or possessor once it becomes evident during the proceedings that their retention runs contrary to Article 129 of this Code and that there are no reasons for their seizure (Article 402).

### **Examination of Witnesses**

#### **Article 145. Summons to Witnesses**

(1) Witnesses shall be heard when there is likelihood that their statements may provide information concerning the offense, perpetrator or any other important circumstances.

(2) The prosecutor's office or the court shall serve summons. Any summoning of a minor under 16 as witness shall be done through the parents or legal representative, except for the cases where this is not possible due to a need to act urgently, or other circumstances as the prosecutor or the court considers important.

(3) Witnesses who cannot answer a summons because of age, illness or serious physical handicap may be questioned at their residence, hospital or any other place.

Witnesses shall be notified in the summons of their being summoned as a witness, of where and when to appear upon being summoned, as well as what consequences shall follow if the witness fails to appear.

(4) Should the witness fail to appear or to justify his absence the court may impose upon him a fine in an amount up to 5,000 KM, or may order the apprehension of the witness.

(5) The apprehension of a witness shall be performed by the Judicial Police. Exceptionally the order may be given by the prosecutor if a duly summoned witness does not appear or justify his absence, provided that this order must be confirmed by the preliminary proceedings judge within 24 hours following the issuance of the order.

(6) Should the witness refuse to testify, upon the proposal of the prosecutor, the court may issue a decision imposing on the witness a fine in an amount up to 5,000 KM. An appeal against this decision is allowed, but shall not stay the execution of the decision.

(7) Appeals against a decision imposing a fine shall be decided by the Panel (Article 24, Paragraph 5).

#### **Article 146. Persons Who Shall Not Be Heard As Witnesses**

The following persons shall not be heard as witnesses:

a) A person who by his statement would violate the duty of keeping state, military or official secrets until the competent body releases him from that duty;

b) A defence attorney of the suspect or accused with respect to the facts that became known to him in his capacity as a defence attorney;

c) A person who by his statement would violate the duty of keeping professional secrets (the priest confessor, journalist for the purpose of protecting the information source, attorney-at-law, notary, physician, midwife and others), unless he was released from that duty by a special regulation or statement of the person who benefits from the secret being kept;

d) A minor who, in view of his age and mental development, is unable to comprehend the importance of his right not to testify.

#### **Article 147. Persons Allowed to Refuse to Testify (*Privileged Witnesses*)**

(1) The following persons may refuse to testify:

a) the spouse or the cohabitee of the suspect or accused;

b) the parent or the child, the adoptive parent or the adopted child of the suspect or accused;

(2) The authority conducting the proceedings shall caution the persons referred to in Paragraph 1 of this Article, prior to their examination or as soon as it learns about their relation to the accused, about the privilege. The caution and answer shall be entered in the record of proceedings.

(3) A person who has grounds for refusing to testify against one of the suspects or accused shall be relieved from the duty to testify against other co-defendants if his testimony, by its nature, cannot be restricted solely to the other suspects or accused.

(4) If a witness has been heard whose testimony is inadmissible or the person testifying has not been cautioned thereof or the caution has not been entered into records, the court decision shall not be based on such testimony.

**Article 148. Right of Witness to Refuse to Respond (*Privilege Against Self-Incrimination*)**

- (1) The witness shall have the right to refuse to answer questions, which answered truthfully would result in that person being prosecuted.
- (2) The witnesses exercising the right referred to in Paragraph 1 of this Article shall answer the same questions provided that immunity is granted to such witnesses. Immunity may be granted by the decision of the prosecutor.
- (3) The witness who has been granted immunity and is testifying as a result of the granted immunity shall not be prosecuted except in case of false testimony.
- (4) A lawyer as the advisor may be assigned by the court's decision to the witness during the examination if it is obvious that the witness himself is not able to exercise his rights during the examination and if his interests cannot be protected in some other manner.

**Article 149. Method of Examination, Confrontation and Identification**

- (1) Witnesses shall be examined individually and in the absence of other witnesses.
- (2) At all times during the proceedings, witnesses may be confronted with other witnesses or with the suspect or accused.
- (3) If necessary to ascertain whether the witness knows the person or object, first the witness shall be required to describe him/her/it or to indicate distinctive signs, and then a line-up of persons shall follow, or the object shall be shown to the witness, if possible among objects of the same type.

**Article 150. Course of the Examination of a Witness**

- (1) The witness must answer orally.
- (2) Before examination, the witness shall be called upon to tell the truth and not to withhold anything and then he shall be cautioned that giving false testimony is a criminal offense.
- (3) Subsequently, the witness shall be asked the following questions: his name and surname, names of father and mother, occupation, residence, place and date of birth, and relation to the suspect, accused or injured party. The witness shall also be cautioned that it is his duty to inform the court regarding a change of address or residence.
- (4) When examining a minor and, in particular if the minor was a victim of the criminal offense, the participants in the proceedings shall act with circumspection in order not to have an adverse effect on the minor's mental condition. If necessary, the minor shall be examined with assistance of a pedagogue or other professional.
- (5) It is not allowed to ask the injured party about his/her sexual behaviour prior to the commission of the criminal offense and if such a question has already been asked, the court verdict shall not be based on such statement.
- (6) Given the age, physical and mental condition, or other justified reasons the witness may be examined using technical means for transferring image and sound in such manner as to permit the parties and the defence attorney to ask questions although not in the same room as the witness. An expert person may be assigned for the examination.
- (7) After general questions the witness shall be invited to present everything that he knows about the case and then the witness shall be asked questions aimed at checking, supplementing and explaining his statement. When examining the witness, it is prohibited to practice deceit or ask leading questions.
- (8) The witness shall be asked how he came to know the facts he is testifying about.
- (9) Witnesses may be confronted if their testimony conflict with important facts. The confronted witnesses shall be examined individually about each circumstance that their testimony conflict and their answer shall be entered into records. Only two witnesses at a time may be confronted.
- (10) The injured party being examined as witness shall be asked whether he wants to have his property claim determined in the criminal proceedings.

**Article 151. Examination of a Witness through a Person Using the Sign Language**

- (1) If a witness is deaf or mute, he shall be examined through a person using the sign language.
- (2) If the witness is deaf the questions shall be asked in writing and if he is mute he shall be asked to answer in writing. If the examination cannot be conducted in this manner then a person who can communicate with the witness shall be invited to be an interpreter.
- (3) If the interpreter has not previously sworn, the interpreter shall take the oath that he shall literally communicate the questions to the witness as well as his testimony.

**Article 152. Oath or Affirmation of a Witness**

- (1) If the requirements for examination have been met, the court may request the witness to take an oath or affirmation prior to testimony.
- (2) Prior to the main trial, the witness may take the oath or affirmation only if there is a fear that due to illness or other reasons he shall not appear at the main trial. The oath or affirmation shall be taken before the judge or the presiding judge. The reason for taking the oath or affirmation shall be entered into the records.
- (3) The text of the oath or affirmation is as follows: "I swear/ I affirm that I shall speak the truth about everything I am going to be asked before this court and that I shall withhold nothing known to me."

(4) The oath or affirmation shall be taken orally by reading its text or with a confirmation after the text of the oath or affirmation has been read by the judge or the presiding judge. Mute witnesses who can read and write shall take the oath or affirmation by signing the text of the oath or affirmation, whereas deaf or mute witnesses who cannot read or write shall take the oath or affirmation through a person using the sign language.

(5) The refusal and reasons for refusal of the witness to take an oath or affirmation shall be entered into records.

#### **Article 153. Individuals Who Shall Not Take the Oath or Affirmation**

The individuals who shall not take the oath or affirmation are persons who are minors at the time of examination, those for whom it has been proved that there is a grounded suspicion that they have committed or participated in commission of an offense for which they are being examined or those who due to their mental condition are unable to comprehend the importance of the oath or affirmation.

#### **Article 154. Recording of the Examination of Witnesses**

The examination of witnesses may be recorded on audio-visual equipment at all stages in the proceedings. It shall be recorded in case of minors under sixteen (16) years of age who were injured parties, and if there are grounds for fearing that the witness cannot be examined at the main trial.

#### **Article 155. (Anonymous) Protected Witness**

With respect to anonymous/protected witnesses in the proceedings before the court, the provisions of the special law shall be applied.

### **Chapter XIX. SPECIAL INVESTIGATIVE ACTIONS**

#### **Article 226. Types of Special Investigative Actions and Conditions of Their Application**

(1) If evidence cannot be obtained in another way or its obtaining would be accompanied by disproportional difficulties, special investigative actions may be ordered against a person against whom there are grounds for suspicion that he has committed or has along with other persons taken part in committing or is participating in the commission of an offense referred to in Article 227 of this Code.

(2) The investigative actions under Paragraph 1 of this Article are as follows:

- a) surveillance and technical recording of telecommunications;
- b) access to the computer systems and computerized data processing;
- c) surveillance and technical recording of premises;
- d) covert following and technical recording of individuals and objects;
- e) use of undercover investigators and informants;
- f) simulated purchase of certain objects and simulated bribery;
- g) supervised transport and delivery of objects of criminal offense.

(3) The investigative actions referred to in Item a) of Paragraph 2 of this Article may also be ordered against persons against whom there are grounds for suspicion that he will deliver to the perpetrator or will receive from the perpetrator of the offenses referred to in Article 120 of this Code information in relation to the offenses, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to those persons.

(4) Provisions regarding the communication between the suspect and his or her defence attorney shall apply accordingly to the discourse between the person referred to in Paragraph 1 of this Article and his or her defence attorney.

(5) In executing the actions referred to in Items e) and f) of Paragraph 2 of this Article police authorities or other persons shall not undertake activities that constitute an incitement to commit a criminal offense. If nevertheless such activities are undertaken, this shall be an instance precluding the criminal prosecution against the incited person for a criminal offense committed in relation to those actions.

#### **Article 227. Criminal Offenses as to Which Special Investigative Actions May Be Ordered**

The investigative actions referred to in Paragraph 2 of Article 219 of this Code may be ordered for following criminal offenses:

- a) criminal offenses against Republika Srpska ;
- b) criminal offenses against humanity and in violation of international law;
- c) criminal offenses of terrorism;
- d) criminal offenses for which, pursuant to the law, a prison sentence of minimum of three (3) years or more may be pronounced.

#### **Article 228. Competence to Order the Actions and the Duration of the Actions**

(1) The investigative actions referred to in Article 226 Paragraph 2 of this Code shall be ordered in an order issued by the preliminary proceedings judge upon the properly reasoned motion of the prosecutor containing: the data on the person against whom the action is to be applied, the grounds for suspicion referred to in Paragraphs 1 or 3 this Code, the reasons for its undertaking and other important circumstances necessitating the application of the actions, the reference to the type of required action and the method of its



implementation and the extent and duration of the action. The order shall contain the same data as those featured in the prosecutor's motion as well as a determination of the duration of the ordered action.

(2) Exceptionally, if a written order cannot be received in due time and if a delay would be detrimental, the execution of an action referred to in Article 226 of this Code may commence on the basis of a verbal order pronounced by the preliminary proceedings judge. The written order of the court must be obtained within 24 hours following the issue of the verbal order.

(3) The investigative actions referred to in Items a), through d) and g) of Paragraph 2 of Article 219 of this Code may last up to one (1) month, while on account of particularly important reasons the duration of such actions and upon the properly reasoned motion of the prosecutor, they may be prolonged for a term of another month, provided that the actions referred to in items a), b) and c) last up to six (6) months in total, while the actions referred to in items d) and g) last up to three (3) months in total. The motion as to the action referred to in Item f) of Paragraph 2 of Article 226 may refer only to a single act, whereas the motion as to each subsequent action against the same person must contain a statement of reasons justifying its application.

(4) The order of the preliminary proceedings judge and the motion of the prosecutor referred to in Paragraph 1 of this Article shall be kept in a separate envelope. By compiling or transcribing the records without making references to the personal data therein about the undercover investigator and informant, or in another appropriate way, the prosecutor and the preliminary proceedings judge shall prevent unauthorized officials as well as the suspect and his defence attorney from establishing the identity of the undercover investigator and of informant.

(5) By way of a written order the preliminary proceedings judge must suspend forthwith the execution of the undertaken actions if the reasons for previously ordering the actions have ceased to exist.

(6) The orders referred to in Paragraph 1 of this Article shall be executed by the police authorities. The companies performing the transmission of information shall be bound to enable the prosecutor and police authorities to enforce the actions referred to in Item a) of Paragraph 2 of Article 226 of this Code.

#### **Article 229. Materials Obtained through the Actions and Notification of the Actions Undertaken**

(1) Upon the completion of the application of the actions referred to in Article 226 of this Code, all information, data and objects obtained through the application of the actions as well as a report must be submitted by police authorities to the prosecutor. The prosecutor shall be bound to provide the preliminary proceedings judge with a written report on the actions undertaken. On the basis of the submitted report the preliminary proceedings judge shall evaluate compliance with his order.

(2) Should the prosecutor refrain from prosecution, or should the data and information obtained through the application of the ordered actions not be needed for the criminal proceedings, they shall be destroyed under the supervision of the preliminary proceedings judge, of which event he shall make separate records. The person against whom any of the actions referred to in Article 226 Paragraph 2 of this Code were undertaken, shall be notified of the undertaking of the actions, the reasons for their undertaking, with the information stating that the received material did not constitute sufficient grounds for criminal prosecution and was thereafter destroyed.

(3) The preliminary proceedings judge shall forthwith and following the undertaking of the actions referred to under Article 226 of this Code inform the person against whom the actions were undertaken. That person may request from the court a review of the legality of the order and of the method by which the order was enforced.

(4) Data and information received through the undertaking of the actions referred to in Paragraph 2 of Article 226 of this Code shall be stored and kept as long as the court file is being kept.

#### **Article 230. "Incidental Findings"**

No data or information received through the undertaking of actions referred to in Article 219 of this Code shall be used as evidence if they are not related to a criminal offense referred to in Article 220 of this Code.

#### **Article 231. Acting Without the Court Order or Beyond It**

If the actions referred to in Article 227 of this Code have been undertaken without the order of the preliminary proceedings judge or contrary to it, the court cannot base its decision on the data or evidence thereby obtained.

#### **Article 232. Admissibility of Evidence Obtained through the Special Actions**

Technical recordings, documents and objects obtained under the conditions and in the manner prescribed by this Code may be used as evidence in the criminal proceedings. The undercover investigator and informant referred to in Article 226 Paragraph 2 Item e) and the persons who have undertaken the actions referred to in Article 226 Paragraph 2 Item f) of this Code may be questioned as witnesses in the course of the actions.

### **Chapter XXXI. PROCEDURE TO RENDER INTERNATIONAL LEGAL ASSISTANCE AND TO ENFORCE INTERNATIONAL AGREEMENTS IN CRIMINAL MATTERS**

#### **Article 418. General Provisions**

International assistance in criminal matters shall be rendered under the provisions of this Code, unless otherwise prescribed by the legislation of Bosnia and Herzegovina or an international agreement.

**Article 419. Communication of a Request for Legal Assistance**

Requests of the court or the prosecutor for legal assistance in criminal matters shall be communicated to foreign authorities by diplomatic channels by the court or the prosecutor through the Ministry of Justice of Republika Srpska to send them to the Ministry of Justice of Bosnia and Herzegovina. Foreign authorities shall send the letters of request to courts of Republika Srpska in the same manner.

**Article 420. Actions Following the Request of Foreign Authorities**

- (1) When the Ministry of Justice of Republika Srpska receives a request of a foreign authority for legal assistance, it shall communicate such request to the prosecutor.
- (2) The prosecutor and the court shall decide as to the permissibility of and manner to carry out actions requested by the foreign authority in accordance with the legislation.

**Article 421. Execution of the Verdict Rendered by Foreign Court**

- (1) The court shall not act on the request of a foreign body in which it seeks the execution of a verdict rendered by a foreign court.
- (2) Notwithstanding Paragraph 1 of this Article, the court shall execute foreign finally binding verdicts with respect to a sanction pronounced by the foreign court if it is so stipulated by international agreement, and if the sanction is also pronounced by the court in accordance with the criminal legislation of Republika Srpska.
- (3) The panel referred to in Paragraph 5 of Article 24 of this Code shall render a verdict.
- (4) Territorial jurisdiction shall be established according to the convict's last domicile in Republika Srpska or, if the convict has not had domicile in Republika Srpska, according to the place of birth. If the convict has not had domicile in Republika Srpska nor was he born in Republika Srpska, the Supreme Court shall designate the case to one of the courts having subject-matter jurisdiction.
- (5) The court having subject-matter jurisdiction shall be the court defined by law.  
In the pronouncement of the verdict referred to in Paragraph 3 of this Article, the court shall incorporate the complete pronouncement of the foreign court's verdict and the name of the foreign court and shall pronounce a sanction. In the explanation of the verdict, the court shall present its reasons when pronouncing the sanction.
- (6) The prosecutor and convicted person or his defence attorney may file an appeal in accordance with this Code against the verdict referred to in Paragraph 4 of this Article.
- (7) If an alien, convicted by the domestic court, or the person authorized by the agreement, files a motion with the court that the convicted person be allowed to serve the sentence in his home country, the court shall act in accordance with the international agreement.

**Article 422. Centralization of Data**

The court shall be obliged to communicate, without delay, to the competent Ministry of Bosnia and Herzegovina information on any criminal offense and perpetrator as well as any valid verdict concerning criminal offenses of production and circulation of counterfeit money, unauthorized production, processing and trade of drugs and poison, human trafficking, dissemination of pornography as well as other criminal offenses for which international agreements provides for the centralization of data. As regards criminal offenses of money laundering or cases involving a criminal offense relating to money laundering, information must also be delivered without delay to the Bosnia and Herzegovina authority responsible for prevention of money laundering.

**Article 423. Relinquishing Prosecution to a Foreign State**

- (1) If a criminal offense was committed in the territory of Republika Srpska by an alien who has his permanent residence in a foreign state, it is possible to cede all criminal files for the purpose of prosecution and trial to such country beyond any requirements for extradition provided for, if such state is not opposed thereto.
- (2) Relinquishment of prosecution and criminal action is not permitted if in that case the alien might be subjected to unfair trial, inhuman and humiliating treatment or punishment.
- (3) The prosecutor shall take a decision on relinquishment before the indictment has been issued. After the issuance of the indictment until the case is referred to the judge or to the panel for the purpose of scheduling the main trial, such decision shall be taken by the preliminary hearing judge at the proposal of the prosecutor.
- (4) Relinquishment may be authorized with respect to criminal offenses punishable by a sentence of imprisonment of up to ten (10) years and criminal offences against traffic security.
- (5) If the injured party in the case is a citizen of Republika Srpska/Bosnia and Herzegovina such relinquishment shall not be allowed if the said citizen is opposed thereto, unless a security was deposited to guarantee enforcement of the injured party's property claim.

**Article 424. Taking Over the Prosecution**

- (1) A request of a foreign state to institute and pursue criminal action against a citizen of Republika Srpska/Bosnia and Herzegovina, who has domicile in Republika Srpska, for a criminal offense committed abroad shall be delivered together with the pertaining file to the competent prosecutor in whose territory the domicile is located.

(2) If a property claim has been submitted to the responsible authority of a foreign state, the same procedure shall apply as if the claim had been submitted to the court.

(3) The foreign state that submitted the request shall be informed of any decision refusing to carry on prosecution as well as of any finally binding decision rendered in the criminal proceedings.

### (3) CROATIA

#### **CONSTITUTION** (adopted in 1990)

##### **Article 9**

Croatian citizenship, its acquisition and termination shall be regulated by law.  
No Croatian citizen shall be exiled from the Republic of Croatia or deprived of citizenship, nor extradited to another state.

##### **Article 140**

International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.

#### **CRIMINAL CODE**

The Official Gazette of the Republic of Croatia "*Narodne novine*" No. 110 of October 21, 1997, entered into force on January 1, 1998. Corrections to the Criminal Code: NN 27/98 of February 27, 1998. Amendments and Supplements to the Criminal Code: NN 129/2000 of December 22, 2000. Amendments to the Criminal Code: NN 51/2001 of June 6, 2001. Amendments and Supplements to the Criminal Code: NN 111/2003 of July 15, 2003., 71/06, 110/07 and 152/08)

#### **Applicability of Criminal Legislation to Criminal Offenses Committed within the Territory of the Republic of Croatia, or Aboard Its Vessel or Aircraft**

##### **Article 13**

- (1) The criminal legislation of the Republic of Croatia shall apply to anyone who commits a criminal offense within its territory.
- (2) The criminal legislation of the Republic of Croatia shall also apply to anyone who commits a criminal offense aboard a domestic vessel, regardless of the location of such a vessel at the time the criminal offense is committed.
- (3) The criminal legislation of the Republic of Croatia shall also apply to anyone who commits a criminal offense aboard a domestic civil aircraft while in flight, or a domestic military aircraft, regardless of the location of such an aircraft at the time the criminal offense is committed.

#### **Applicability of Criminal Legislation to Criminal Offenses Committed Outside the Territory of the Republic of Croatia**

##### **Article 14**

- (1) The criminal legislation of the Republic of Croatia shall apply to anyone who, outside its territory, commits:
  - a) any criminal offense against the Republic of Croatia provided for in Chapter (xii) of this Code;
  - b) the criminal offense of counterfeiting money and securities of the Republic of Croatia as defined in Articles 274 and 275 of this Code;
  - c) a criminal offense which the Republic of Croatia is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements;
  - d) a criminal offense against a Croatian state official or a civil servant relating to his office.
- (2) The criminal legislation of the Republic of Croatia shall be applied to a Croatian citizen who, outside the territory of the Republic of Croatia, commits a criminal offense other than those specified in paragraph 1 of this Article.
- (3) The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits a criminal offense against the Republic of Croatia or its citizen which is not specified in paragraph 1 of this Article.
- (4) The criminal legislation of the Republic of Croatia shall be applied to an alien who, outside the territory of the Republic of Croatia, commits against a foreign state or another alien a criminal offense for which, under the law in force in the place of crime, a punishment of five years of imprisonment or a more severe penalty may be applied or who commits a criminal offense from Chapter (xiii) of this Code.
- (5) In the cases referred to in paragraphs 2 and 3 of this Article, the criminal legislation of the Republic of Croatia shall be applied only if the perpetrator of the criminal offense is found within the territory of the Republic of Croatia, or has been extradited to it, and in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Republic of Croatia and is not extradited to another state.

**Particularities Regarding the Institution of Criminal Proceedings for Criminal Offenses Committed within the Territory of the Republic of Croatia**

**Article 15**

- (1) When, in the case of the applicability of the criminal legislation of the Republic of Croatia pursuant to Article 13 of this Code, criminal proceedings have commenced or are terminated in a foreign state, criminal proceedings in the Republic of Croatia shall be instituted only upon approval of the State Attorney of the Republic of Croatia.
- (2) Criminal proceedings for the purposes of applying the criminal legislation of the Republic of Croatia shall not be instituted against the perpetrator of the criminal offence which, besides the territory of the Republic of Croatia, has also been committed in the territory of a state Contracting Party to the Convention on the Implementation of the Schengen Agreement in which the criminal proceedings with respect to that offence have been completed with a final decision;<sup>8</sup>
- (3) When, in the case of the applicability of the criminal legislation of the Republic of Croatia pursuant to Article 13 of this Code, the perpetrator of a criminal offense is an alien, criminal proceedings may, under conditions of reciprocity, be ceded to the foreign state.
- (4) The decision on ceding criminal proceedings in the case referred to in paragraph 3 of this Article shall be passed by the State Attorney of the Republic of Croatia.

**Particularities Regarding the Institution of Criminal Proceedings for Criminal Offenses Committed outside the Territory of the Republic of Croatia**

**Article 16**

- (1) In the cases specified in Article 14, paragraphs 2, 3 and 4 of this Code, criminal proceedings for the purposes of applying the criminal legislation of the Republic of Croatia shall not be instituted:
  - a) if the perpetrator has served in full the sentence imposed on him in a foreign state;
  - b) if the perpetrator has been acquitted by a final judgment in a foreign state, or if he has been pardoned, or if the statutory time limitation has expired under the law in force at the place of crime;
  - c) if, under the law in force at the place of the crime, criminal proceedings may be instituted only upon a motion, a consent or a private charge of the person against whom the criminal offense had been committed, and such a motion was not made or a private charge was not brought, or the consent was not given.
- (2) If, in the cases specified in Article 14, paragraphs 2, 3 and 4 of this Code, such an act does not constitute a criminal offense under the law in force in the country of the perpetration, criminal proceedings may be instituted only upon the approval of the State Attorney of the Republic of Croatia.
- (3) In the case referred to in Article 14, paragraph 4 of this Code, when the committed act is not punishable under the law in force in the country in which it was committed but is deemed to be a criminal offense according to the general principles of law of the international community, the State Attorney of the Republic of Croatia may authorize the institution of criminal proceedings in the Republic of Croatia and the application of the criminal legislation of the Republic of Croatia.

**Confiscation of Pecuniary Gain Acquired by a Criminal Offense**

**Article 82**

- (1) No one shall keep any pecuniary gain acquired as a result of criminal offence. Such gain shall be forfeited by the court decision establishing that the criminal offence has been committed.
- (2) If a criminal offence falling within the jurisdiction of the Office for the prevention of corruption and organised crime has been committed, it is assumed that the entire property of the perpetrator has been acquired as a pecuniary gain from criminal offence, unless the perpetrator makes it clear that its origin is legal.
- (3) The pecuniary gain referred to in paragraph 2 of this Article shall be forfeited even if it seems likely that it is located, on any legal basis, with the perpetrator's marital or extramarital spouse, his relative in direct line, relative in collateral line within the third degree, and relative by marriage within the second degree and with the perpetrator's adoptive child and adoptive parent.
- (4) The pecuniary gain referred to in paragraph 2 of this Article shall be forfeited even if it is located, on any legal basis, with another physical or legal person, unless it has been acquired *bona fide*.
- (5) When it is established that the pecuniary gain may not be forfeited, the court shall order the person from which the pecuniary gain is being forfeited to pay an adequate countervalue expressed in money.
- (6) The injured party who, in the course of criminal proceedings, or within the maximum time limit of three months after the final decision on the forfeiture of objects, wishes to realize his right to reimbursement within a period of three months after the decision regarding his right.

<sup>8</sup>The provision of Article 15, Paragraph 2 enters into force on the date of the admission of the Republic of Croatia into the European Union.

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**LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS** (OG, 178/04, in force since 01.07.2005)**Chapter I. GENERAL PROVISIONS****Article 1**

(1) This Law regulates mutual legal assistance in criminal matters (hereinafter: «mutual legal assistance»), unless provided otherwise by an international treaty.

(2) Mutual legal assistance is provided in respect of criminal Law s the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting state.

(3) Mutual legal assistance may also be afforded in misdemeanour proceedings brought by the administrative authorities, in respect of Law s which are punishable under the Croatian law by pecuniary fine, by virtue of being infringements of the rule of law and where in such proceedings the decision of the administrative authority may give rise to proceedings before a court having subject matter jurisdiction in criminal matters.

(4) Mutual legal assistance is also afforded in criminal proceedings referred to in paragraph 2 of this Article, and misdemeanour proceedings referred to in paragraph 3 of this Article, which are brought against legal persons.

(5) Mutual legal assistance is also afforded in respect of the European Court of Human Rights and the European Court of Justice, as well as in respect of other international and supranational organisations whose member the Republic of Croatia may become, if so stipulated in an international treaty.

**Article 3**

(1) In particular, this Law shall regulate the following:

1. mutual legal assistance in criminal proceedings pending in the Republic of Croatia or a foreign country (procuring and transmitting articles to be produced in evidence, service of writs and records of judicial verdicts, appearance before the court of witnesses for testimony and other Law s necessary to carry out the court proceedings),

2. procedures of extradition to the Republic of Croatia of prosecuted or convicted persons based on verdicts of domestic courts,

3. Law s of extradition of foreigners prosecuted or convicted based on judicial verdicts of the state requesting extradition,

4. Law s of taking over and surrendering criminal prosecution,

5. Law s of enforcement of foreign judicial verdicts in criminal matters.

(2) This Law shall not apply to arrests, the enforcement of verdicts or offences under military law which are not offences punishable under ordinary criminal law.

**Article 4**

Mutual legal assistance is afforded in the widest sense, in compliance with the principles of domestic legal order, principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

**Article 5**

A domestic competent authority shall decide on suitability and manner of execution of an act of mutual legal assistance from the request of a foreign judicial authority, unless provided otherwise by the provisions of this Law or an international treaty.

**Chapter II. MUTUAL LEGAL ASSISTANCE IN CRIMINAL PROCEEDINGS PENDING IN THE REPUBLIC OF CROATIA OR A FOREIGN STATE***Authorities competent to afford mutual legal assistance and the channels of communication***Article 6**

(1) Domestic judicial authorities transmit the requests for mutual assistance and information referred to in Article 18 paragraph 1 of this Law to foreign competent authorities through the Ministry of Justice.

(2) The Ministry of Justice has jurisdiction to receive requests for mutual assistance of foreign competent authorities, and transmit them without delay to domestic judicial authorities, unless evident that the request should be refused.

(3) The Ministry of Justice may return the request to the foreign competent authority for corrections or supplements and determine an appropriate deadline for delivery of so corrected, i.e. supplemented request. After the expiry of the deadline, the request shall be executed according to the status in the judicial record.

(4) As an exception to paragraph 1 of this Article, domestic judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when so explicitly provided by the provisions of this Law and subject to condition of reciprocity, or when such a communication is envisaged by an international treaty (direct communication).

(5) In cases of direct communication referred to in paragraphs 4 and 7 of this Article, a domestic judicial authority shall communicate a copy of the request for mutual legal assistance to the Ministry of Justice.

(6) In urgent cases and subject to reciprocity, the Ministry of Justice may transmit and receive requests for mutual legal assistance through the Interpol.

(7) In cases of direct communication referred to in paragraph 4 of this Article, domestic judicial authorities may, provided they fulfil the obligation referred to in paragraph 5 of this Article, transmit and receive requests for mutual legal assistance through the Interpol.

(8) The Ministry of Justice shall transmit and receive through the Ministry of Foreign Affairs the requests for mutual legal assistance to/from a foreign state that has no international treaty in force with the Republic of Croatia, as well as in cases when an international treaty envisages use of special diplomatic channels.

*Service of documents by post*

**Article 7**

(1) Domestic judicial authorities may, subject to condition of reciprocity or if so envisaged by an international treaty, address procedural documents and judicial verdicts to the persons who find themselves abroad directly by mail.

(2) Procedural documents and judicial verdicts referred to in paragraph 1 of this Article shall be accompanied by a report stating that the addressee may obtain information regarding his or her rights and obligations concerning the service of documents.

(3) Procedural documents and judicial verdicts shall be transmitted to the persons who find themselves abroad in the Croatian language.

(4) If a domestic judicial authority knows or has reasons to believe that the addressee understands only some other language, the documents shall be accompanied by a translation into that other language.

(5) Domestic regulations shall apply to the validity of service.

*Form and mandatory contents of the request*

**Article 8**

(1) Domestic judicial authority shall Law upon the request for mutual legal assistance of a foreign judicial authority if the request was transmitted in writing. The request, as well as attached documents, have to be accompanied by the translation into Croatian, and if this is not possible, into English. The translations have to be officially certified.

(2) A domestic judicial authority shall Law upon a request for mutual legal assistance of a foreign judicial authority even if the request was transmitted via electronic or some other telecommunications means which provide written record, if it may establish its authenticity and if the foreign competent authority is willing, upon request, to deliver a written evidence on the manner of transmission and the original request.

(3) Unless provided otherwise by an international treaty or the provisions of this Law, the request for mutual legal assistance shall indicate the following:

1. place of issuance and the name of the competent authority making the request,
2. legal grounds to afford mutual legal assistance,
3. detailed description of an act of mutual legal assistance sought and the reason for the request,
4. legal title, short factual and legal description of the criminal offence (unless the request refers to service of judicial verdicts, depositions of parties, documents and alike),
5. exact data and nationality of the person concerned and his status in the proceedings,
6. in case of service of judicial writs, also the type of the writ to be served.

**Article 9**

(1) In the mutual legal assistance proceedings, the prosecuted person may have a defending attorney.

(2) Third persons concerned by the measure or Law of mutual legal assistance may have proxies in the mutual legal assistance proceedings.

(3) An appeal may be lodged against the decisions of domestic judicial authorities in the proceedings of affording mutual legal assistance.

(4) An appeal against the decision issued pursuant to this Law does not delay its enforcement, unless it concerns a decision:

1. of the county court of the Republic of Croatia, determining existence of legal preconditions for extradition, or
2. granting return of articles or monetary gain to a foreign country.

*Particularities in the manner of executing the request*

**Article 10**

(1) When affording mutual legal assistance, domestic judicial authority shall comply with the formalities and procedures expressly indicated in the request as necessary pursuant to the law of the requesting state, unless provided otherwise by an international treaty and provided that such formalities and procedures are not contrary to the principles of the domestic legal order.

(2) Domestic judicial authority executes the request of a foreign judicial authority without delay, taking into account procedural deadlines, as well as other specially determined deadlines explained in the request.

(3) If a domestic judicial authority may foresee that it shall not be able to observe a specially determined deadline for execution of the request, while the explanation referred to in paragraph 2 of this Article expressly indicates that each postponement will lead to significant disruption of procedure before a foreign judicial authority, the domestic judicial authority shall indicate without delay the required time to execute the

request. Domestic and foreign judicial authorities may thereafter agree on further Law s required to be undertaken in connection with the request.

(4) If the request of a foreign judicial authority may not be executed, or may not be executed fully in compliance with the required conditions, the domestic judicial authority shall without delay inform the foreign judicial authority to this effect, indicating the conditions under which such request may be executed.

#### **Article 11**

(1) Upon explicit request of a foreign judicial authority, the domestic judicial authority shall inform of the place and date of execution of the request for mutual legal assistance.

(2) Upon explicit request of a foreign judicial authority, the domestic judicial authority may allow presence of a foreign official during the execution of the request for mutual legal assistance.

(3) A request referred to in paragraph 2 of this Article shall not be refused if this would likely avoid the need for supplementary requests for assistance.

#### *Refusal of the request*

#### **Article 12**

(1) Domestic competent authority may refuse the request for mutual legal assistance:

1. if the request concerns an offence which is considered to be a political offence, an offence connected with a political offence,

2. if the request concerns a fiscal offence,

3. if the execution of the request would prejudice the sovereignty, security, legal order or other essential interests of the Republic of Croatia,

4. if it may reasonably be assumed that a person whose extradition is claimed would be in case of extradition criminally prosecuted or punished on account of his race, religious beliefs, nationality, affiliation with a particular social group or on account of his political beliefs, i.e. that that person's position may be prejudiced for any of these reasons,

5. if it concerns an insignificant criminal offence.

(2) Criminal offences or attempts to commit criminal offences against the values protected by international law, and participation in execution of such criminal offences, may not serve as basis for refusal of the request for mutual legal assistance in the context of paragraph 1 point 1 of this Article.

(3) Request for mutual legal assistance concerning the fiscal offence referred to in paragraph 1 point 2 of this Article shall not be refused solely based on the grounds it concerns an offence which is considered to be a fiscal offence pursuant to domestic law.

#### **Article 13**

(1) A domestic judicial authority shall refuse the request for mutual legal assistance:

1. if the prosecuted person has been acquitted in the Republic of Croatia for the same criminal offence based on the substantive-legal grounds or if a procedure against him has been discontinued, or if he was acquitted of the punishment, or if a sanction was executed or may not be executed pursuant to the law of the country in which the verdict has been passed,

2. if criminal proceedings are pending against the prosecuted person in the Republic of Croatia for the same criminal offence, unless the execution of the request might lead to a decision releasing the prosecuted person from custody,

3. if the criminal prosecution, execution of a sanction or of a security measure or protective measure pursuant to the domestic law would be barred due to the absolute statute of limitation.

(2) The provisions referred to in paragraph 1 points 1 and 3 of this Article shall not apply in cases of reversal of the final verdict in the requesting state.

#### **Article 14**

The decision refusing the request to afford mutual legal assistance must give reasons for such a decision, unless provided otherwise by an international treaty.

#### *Postponed execution of the request*

#### **Article 15**

Domestic judicial authority may postpone execution of the request for mutual legal assistance if such Law ion would prejudice the course of the investigation, prosecution or proceedings pending before a domestic judicial authority, which are connected to the request. The domestic judicial authority shall inform the foreign judicial authority that transmitted the request.

#### *Partial execution of the request*

#### **Article 16**

If the request for mutual legal assistance concerns several facts which may fall under several domestic criminal-law provisions, and there are reasons to refuse some of them, the request shall be executed only in respect of the facts lacking the grounds for refusal.



*Reciprocity*

**Article 17**

(1) Domestic judicial authorities shall afford assistance in respect of the request for mutual legal assistance to a judicial authority of the state that has no international treaty on legal assistance in force with the Republic of Croatia, only if it may be expected based on the assurances provided by the requesting state that this state would execute corresponding request of the domestic judicial authority.

(2) Assurances referred to in paragraph 1 of this Article shall not be sought for the purpose of service of judicial verdicts, deposition of parties and other documents.

*Spontaneous exchange of information*

**Article 18**

(1) Without prejudice in any way to their own investigations or proceedings and subject to condition of reciprocity, domestic judicial authorities may, without prior request, forward to the competent foreign judicial authorities information obtained within the framework of their own investigations, which relate to criminal offences or breach of the rule of law referred to in Article 1 paragraph 3 of this Law, when they consider that the disclosure of such information might assist the receiving state in initiating or carrying out investigations or court proceedings or might lead to a request for mutual assistance by that state.

(2) Domestic judicial authority shall request from the foreign judicial authority to which it transmitted the information referred to in paragraph 1 of this Article, the communications on any Law ion undertaken upon such information, as well as transmission of issued decisions, and it may also impose other conditions for the use of such information at the receiving state.

(3) Information referred to in paragraph 1 of this Article shall be forwarded through the Ministry of Justice.

*Costs*

**Article 19**

(1) Remuneration of costs incurred in respect of afforded mutual legal assistance shall not be claimed, except:

1. costs incurred by the expert testimony,
2. costs incurred by a temporary transfer of persons deprived of liberty,
3. costs of substantial or extraordinary nature.

(2) Costs referred to in paragraph 1 point 3 of this Article shall be remunerated according to an arrangement between the Ministry of Justice and the competent authority of the foreign state in each individual case separately.

*Special cases of communicating information on criminal offences*

**Article 20**

(1) When the request for mutual legal assistance concerns a criminal offence related to trafficking in humans and slavery, money laundering, counterfeiting money, illicit production, processing and sale of narcotic substances and poisons, production and dissemination of pornographic material, criminal offences related to organized crime and terrorism, and other criminal offences for which centralisation of data has been provided under international agreements, the domestic judicial authority conducting criminal proceedings, i.e. authority affording mutual legal assistance, shall be bound immediately to transmit the data on such criminal offences and perpetrators to the Ministry of Interior, while the first-instance court shall in addition transmit a final verdict.

(2) If the request for legal assistance concerning the criminal offences referred to in paragraph 1 of this Article was forwarded to or received directly within the context of Article 8 paragraph 2 of this Law, the domestic judicial authority shall also transmit without delay the data referred to in paragraph 1 of this Article to the Ministry of Justice.

(3) At least once a year, the Ministry of Justice shall notify the foreign competent authority of all criminal convictions and measures in respect of nationals of that foreign state, entered into judicial records, unless provided otherwise by an international treaty.

(4) Upon a request of a foreign competent authority, the Ministry of Justice shall transmit in each individual case a transcript of the verdicts and measures on which it delivered notification, in the context of paragraph 3 of this Article, and it may also deliver other information that it deems might be useful for subsequent measures at the requesting state.

*Confidentiality*

**Article 21**

(1) Upon a request of a foreign judicial authority, the Ministry of Justice and the domestic judicial authority shall keep confidential the request for mutual assistance and its substance, except to the extent necessary to execute the request.

(2) If the confidentiality condition referred to in paragraph 1 may not be upheld, the Ministry of Justice, i.e. domestic judicial authority shall notify the foreign judicial authority on this fact, without delay.

**Article 22**

Third persons who prove having legal interest may be present in the proceedings of mutual legal assistance and they are entitled to inspect the file, except:

1. if this is in the interest of criminal proceedings pending abroad,
2. for protection of essential interests of a foreign state, upon its request,
3. due to the nature or urgency of the measure undertaken,
4. due to the protection of justified interests of the parties to the proceedings,
5. if in the interest of criminal proceedings pending in the Republic of Croatia.

*Provisional measures*

**Article 23**

(1) Upon a request of a foreign judicial authority, the competent domestic judicial authority may issue a decision ordering provisional measures for securing the evidence, protection of endangered legal interests and other measures in compliance with the domestic law.

(2) Appeal against the decision referred to in paragraph 1 of this Article does not postpone its execution.

(3) Domestic judicial authority may partially grant the request referred to in paragraph 1 of this Article, or it may condition execution of such a request by time limitation.

**Article 24**

Upon a request of a foreign judicial authority, the domestic judicial authority may order measures temporarily restricting certain constitutional rights, subject to conditions provided by the Criminal Procedure Law.

Hearing of a person domiciled abroad

**Article 25**

(1) A person domiciled abroad, appearing in the Republic of Croatia on a summons by the domestic judicial authority, to testify as a witness or expert witness in the criminal proceedings, shall not be criminally prosecuted, or subject to any other restriction of his personal liberty due to reasons anterior to his arrival.

(2) The immunity provided for in paragraph 1 of this Article shall cease when the person upon leaving the state territory of the Republic of Croatia either returns or does not leave the state territory of the Republic of Croatia upon expiry of eight days as of the testimony.

*Temporary transfer for testimony*

**Article 26**

(1) Upon a request of a foreign judicial authority, a person who has been deprived of liberty in the Republic of Croatia, including Croatian nationals, may be temporarily transferred to a foreign judicial authority for the purpose of testimony as witness or for confrontation purposes, provided that the person is returned to the Republic of Croatia within a deadline determined by the domestic judicial authority, and provided that:

1. the person consents to temporary transfer,
2. the presence of a person is necessary at the criminal proceedings pending in the foreign state,
3. the temporary transfer is not liable to prolong his or her deprivation of liberty,
4. there are no other overriding grounds against temporary transfer.

(2) Person referred to in paragraph 1 of this Article who was temporarily transferred to a foreign judicial authority, shall remain in custody during the whole stay abroad, unless the domestic judicial authority applies for his or her release.

**Article 27**

When a person placed in custody based on a decision of a foreign judicial authority has been transferred to a domestic judicial authority, for the purpose of hearing in the criminal proceedings, the decision of the foreign judicial authority on placing in custody abroad shall also apply in the Republic of Croatia.

*Treatment of the temporarily seized articles*

**Article 28**

(1) Articles, documents or monetary gain which have been temporarily seized to be presented as evidence, as well as records and decisions, shall be made available to a foreign judicial authority upon its request, after the completion of the mutual legal assistance proceedings in the Republic of Croatia.

(2) Should a third person who acquired the right in good faith, the state authority or the injured party domiciled in the Republic of Croatia claim his/her right in the articles, documents or monetary gain referred to in paragraph 1 of this Article, such articles, documents or monetary gain shall be delivered only if the competent foreign authority guarantees their return free of charge after the completion of its proceedings.

(3) Delivery may be postponed, as long as the articles, documents or monetary gain are necessary at the criminal proceedings pending in the Republic of Croatia.

**Article 29**

(1) Articles or monetary gain which have been temporarily seized for security purposes may be delivered to a foreign judicial authority, upon its request, upon completion of the mutual legal assistance proceedings, for the purpose of seizure or return to an authorised person.

(2) Articles and monetary gain referred to in paragraph 1 of this Article encompass:

1. articles used to commit the criminal offence,
2. products of the criminal offence or their counter-value,
3. gain resulting from the criminal offence or their counter-value,

4. presents and other gifts as an incentive and reward to commit a criminal offence or their counter-value.
- (3) Delivery may follow in any stage of foreign criminal proceedings, and it may only be executed based on a final and enforceable decision of a foreign judicial authority.
- (4) Articles or monetary gain may be permanently detained in the Republic of Croatia if:
1. the injured person is domiciled in the Republic of Croatia, and the objects have to be returned to that person,
  2. state authority claims the right of the Republic of Croatia in such objects,
  3. person not participating in the offence, whose claims have not been guaranteed through the requesting state, proves that he/she has acquired in good faith the right in such articles or monetary gain either in the Republic of Croatia or abroad, and the person is domiciled in the Republic of Croatia,
  4. if the articles or monetary gain are necessary to carry out the criminal proceedings pending in the Republic of Croatia or to apply the seizure measure in the Republic of Croatia.
- (5) If an authorised person claims rights in the articles or monetary gain referred to in paragraph 4 of this Article, their delivery to the requesting state shall be postponed until resolution of the legal issues. Disputed articles or monetary gain may be delivered to an authorised person:
1. if the requesting state consents,
  2. if the state authority consents, in cases referred to in paragraph 4 point 2 of this Article,
  3. if the domestic court has acknowledged authority to claim.

### **Article 30**

When a domestic judicial authority deems that mutual legal assistance has been afforded in whole or partially, it shall issue a decision containing reasons to that effect.

### **Article 31**

- (1) A domestic judicial authority may condition affording the mutual legal assistance in whole or partially, by prior settlement of certain charges (taxes, surtaxes, fiscal stamps and alike).
- (2) The Ministry of Justice determines an appropriate term for the competent foreign authority to state opinion on accepting or refusing payment of charges referred to in paragraph 1 of this Article. In case of refusal or silence of a foreign judicial authority, mutual legal assistance shall be afforded in respect of the part of the request which is not connected to the charges.

## **Chapter III. EXTRADITION**

### **Part One: PRECONDITIONS**

#### *Extradition of a Croatian national*

### **Article 32**

- (1) A Croatian national may not be extradited for criminal prosecution or enforcement of a prison sentence in a foreign state, nor may he be transferred as a convicted person from the Republic of Croatia to another state for the purpose of serving the prison sentence.
- (2) The provision of paragraph 1 of this Article shall not apply in cases of temporary transfer of a Croatian national to the domestic judicial authority for the purpose of undertaking certain Law ions within the criminal proceedings in the Republic of Croatia.

#### *Extradition of a foreigner*

### **Article 33**

A foreigner may be extradited to another state for the purpose of criminal prosecution or enforcement of a sanction implying deprivation of liberty, if that state requested extradition or has taken over criminal prosecution or enforcement of a criminal verdict, upon request of the Republic of Croatia, i.e. with its consent.

### **Article 34**

- (1) A foreigner who has been prosecuted or convicted based on a decision of a foreign judicial authority of the requesting state, for criminal offences punishable pursuant to the law of that state, shall be extradited to that state, for the purpose of carrying out the criminal proceedings, i.e. enforcement of sanctions which include deprivation of liberty, provided that the domestic law incorporates corresponding essential features of the relevant offences.
- (2) Extradition for the purpose of carrying out criminal proceedings may only be granted for offences that are punishable pursuant to the domestic law by prison or security measure implying deprivation of liberty for the longest period of at least one year or by application of a more severe penalty.
- (3) Extradition for the purpose of enforcement of sanctions including deprivation of liberty may be granted when, in cases of offences referred to in paragraph 1 of this Article, a final verdict has been issued for the prison sentence or security measure implying detention, determined for a period of at least four months.
- (4) As an exception, if the request for extradition covers several separate criminal offences out of which some fail to satisfy the conditions referred to in paragraphs 1 and 2 of this Article in respect of the duration of the penalty that may be determined or if the offences concern only pecuniary fine, the extradition may also be granted for these offences.

(5) Extradition shall be allowed if the requesting state guarantees that it would grant the request of the Republic of Croatia of the same kind.

*Refusal to extradite*

**Article 35**

(1) Extradition shall not be allowed:

1. if the person whose extradition is claimed is a national of the Republic of Croatia,
2. if an offence for which the extradition is claimed was committed either on the territory of the Republic of Croatia, or against Croatia or its national,
3. if the offence for which extradition is claimed is not a criminal offence in both domestic law and the law of the state in which it was committed,
4. if, pursuant to domestic law, a statute of limitation for criminal prosecution or statute of limitation for execution of the punishment has occurred prior to putting the foreigner in detention or prior to his interrogation as a prosecuted person,
5. if a foreigner whose extradition is claimed had already been convicted for the same offence by the domestic court, or if he was finally acquitted in respect of that same offence by the domestic court, unless conditions are met for re-trial as envisaged by the Criminal Procedure Law, or if the criminal proceedings have been initiated in the Republic of Croatia against the foreigner for the same offence committed against the Republic of Croatia. In case of proceedings initiated due to an offence committed towards the national of the Republic of Croatia – if no security has been deposited for realization of material claim of the injured person,
6. if identity of a person whose extradition is claimed has not been determined,
7. if there are no sufficient evidence for reasonable doubt that the foreigner whose extradition is claimed has committed a particular criminal offence and that there exists a final verdict.

(2) Extradition may be refused if the Republic of Croatia may take over the prosecution of an offence or enforcement of the criminal verdict, and this seems to be appropriate considering the social rehabilitation of the prosecuted person.

**Article 36**

A foreigner subject to jurisdiction of the Republic of Croatia may exceptionally be extradited to another state if justified by special circumstances, and particularly by possibility of social rehabilitation.

*Rule of speciality*

**Article 37**

(1) Extradition shall be allowed provided that the requesting state, in respect of the extradited person:

1. does not prosecute, punish or extradite that person to a third state for any offence committed prior to extradition, in respect of an offence for which extradition has not been granted,
2. does not restrict his personal rights due to the reasons which have not occurred in relation to extradition,
3. does not bring him before a special court.

(2) Conditions referred to in paragraph 1 points 1 and 2 of this Article shall not apply:

1. if the extradited person expressly waives such conditions, or
2. if the extradited person, despite being warned of the consequences, fails to leave the state territory of the requesting state within 45 days after the probationary or final release from detention, although he could have done so, or if he comes back to that territory after leaving the territory.

*Additional request for extradition*

**Article 38**

If the extradited person is charged for other criminal offences, the requesting state shall be allowed to carry out the criminal proceedings in respect of these offences, subject to conditions referred to in Articles 34, 35 and 37 of this Law.

*Conflicting requests*

**Article 39**

(1) If extradition is requested concurrently by more than one state for the same person and the same criminal offence, the extradition shall be granted to the state in whose territory the offence had been committed, or in whose territory majority of criminal activities have been committed in case of continuous or permanent criminal offence, or in whose territory the organiser is domiciled in case of organized crime offences.

(2) Should a state request extradition of the same person for different criminal offences, the decision shall be reached having regard to all circumstances of the particular case, especially the seriousness of the offence, the respective dates of the requests, nationality of the person claimed, possibility of better social rehabilitation and subsequent extradition to a third state.

(3) The decision referred to in previous paragraphs of this article shall state the reasons.

*Conditions for extradition to the Republic of Croatia*

**Article 40**

(1) If the criminal proceedings are pending in the Republic of Croatia against a person residing in a foreign country or if a domestic court has issued a final verdict against such a person, the Minister of Justice may transmit a request for extradition upon the request of a domestic judicial authority.

(2) If the claimed person is extradited, he shall be criminally prosecuted, i.e. a sanction may be enforced against that person, only for a criminal offence for which the extradition was granted, unless the person waived that right and the extraditing state has not imposed such a condition.

(3) The request referred to in paragraph 1 of this Article shall be supported by documents referred to in Article 43 of this Law.

**Article 41**

(1) If a foreign state granted extradition subject to certain conditions in respect of the type or duration of penalty which may be sentenced, i.e. enforced, and the extradition is accepted subject to such conditions, the court is bound by such conditions in sentencing the penalty. If the matter concerns an enforcement of an already sentenced verdict, the court who adjudicated in the final instance shall reverse the verdict and adjust the sentenced penalty to the conditions for extradition.

(2) If the extradited person was in custody in a foreign state due to a criminal offence that he was extradited for, the period of custody shall be deducted from the punishment.

*Transit of the extradited person through the Republic of Croatia*

**Article 42**

(1) If a foreign state claims extradition from another foreign state, and the transit of the extradited person should be through the territory of the Republic of Croatia, the Minister of Justice may allow transit to the requesting state, pursuant to the conditions necessary for granting extradition, referred to in Article 34 and 35 of this Law.

(2) Request for transit of extradited person through the state territory of the Republic of Croatia has to contain all data referred to in Article 43 of this Law.

(3) Costs of transit of the extradited person through the territory of the Republic of Croatia are borne by the state requesting extradition.

**Part Two: PROCEDURE OF EXTRADITION**

*Request for extradition*

**Article 43**

(1) Request for extradition contains data referred to in Article 8 paragraph 3 of this Law, and the request shall be supported by:

1. means to determine identity of the extradited person (detailed description, photographs, finger prints and alike),
2. indictment or a verdict or a detention order or any other corresponding Law, either in original or certified copy, which should state the name and surname of the person whose extradition is claimed and other data necessary to determine his identity,
3. description of the offence, legal title of the offence and evidence for reasonable doubt,
4. excerpt from the text of the criminal Law to be applied or has been applied to the extradited person concerning the offence for which extradition is claimed, and if the offence has been committed in the territory of a third country, then also an excerpt from the criminal law of that state.

(2) If the documents referred to in paragraph 1 of this Article have been composed in a foreign language, the request should be supported by the translation into Croatian.

*Request for temporary arrest for extradition*

**Article 44**

In addition to the contents provided for in Article 8 paragraph 3 of this Law, the request for temporary arrest for extradition shall contain the following:

1. data to determine identity of a person whose arrest is claimed for extradition,
2. factual and legal description of the criminal offence,
3. statement of the judicial authority concerning existence of a final convicting verdict or a detention order,
4. statement that extradition shall be requested for the person whose arrest for extradition is claimed.

**Article 45**

The Ministry of Justice transmits the request for extradition, i.e. request for temporary arrest for the purpose of extradition, to the competent court on whose territory the person whose extradition is claimed either resides or is found.

**Article 46**

A person whose extradition is sought may be arrested for extradition based on a written request of a foreign judicial authority or, subject to condition of reciprocity, based on an international APB.

*Detention order for extradition*

**Article 47**

- (1) The competent court issues a detention order for extradition, unless there is likelihood that the extradition shall not be granted, and the foreigner's stay in freedom does not endanger the extradition procedure.
- (2) If a foreigner is not capable of being in detention or if justified by other reasons, the competent court may order other measures to guarantee his presence, instead of detention.

*Revocation of detention*

**Article 48**

- (1) Investigative judge shall release the foreigner from detention when the reasons for detention cease to exist or if the request for extradition is not submitted within a term determined by him, having regard of all the circumstances contained in the request for extradition, and which may not be longer than 40 days as of the day of placement into detention. Detention determined pursuant to Article 44 of this Law may be revoked if the request for extradition is not submitted within 18 days as of the foreigner's detention.
- (2) The Ministry of Justice shall notify without delay the requesting state about the deadlines referred to in paragraph 1 of this Article. Upon request of the requesting state, the competent judicial authority may prolong detention for maximum of additional 30 days.
- (3) If the extradited person is already in detention on certain other grounds, the deadline referred to in paragraph 1 of this Article will start as of the date of the detention order for extradition.

*Prolongation and renewal of the detention*

**Article 49**

- (1) After the receipt of the request for extradition, the detention measure shall stay in force during the whole extradition procedure until expiry of the deadline for enforcement of a resolution on the extradition referred to in Article 59 of this Law.
- (2) Should the extradited person be released from detention due to expiry of deadlines provided for in Article 48 paragraphs 1 and 2 of this Law, it is allowed to renew the detention for extradition if the requesting state re-submits the request for temporary arrest for extradition or a request for extradition.

*Temporary seizure of articles*

**Article 50**

- (1) Upon a request of the requesting state, the domestic court may order search of the arrested person and premises.
- (2) During the arrest, articles and monetary gain which may serve in the foreign criminal proceedings as evidence or originating from the criminal offence shall be temporarily seized.
- (3) Measures referred to in paragraphs 1 and 2 of this Article may last until the issuance of a decision on detention for extradition, but for the maximum of 48 hours following the arrest.

**Article 51**

Notification on arrest, temporary seizure of articles, i.e. search of the arrested person and premises, shall be delivered to the Ministry of Justice without delay.

*Right to be heard*

**Article 52**

- (1) When issuing a decision on detention for execution, the competent court shall determine whether the extradited person is a person identified in the request, and thereafter the court shall inform him without delay why and based on which evidence his extradition is claimed and invite him to state his defence. The court will explain to him the preconditions for extradition, and will familiarize him with his right to an appeal and right to an attorney, i.e. appoint him a defending attorney ex officio in cases of criminal offences for which the Criminal Procedure Law prescribes mandatory defence. He shall also notify the extradited person on the possibility of giving consent to surrender to the requesting state pursuant to the simplified extradition procedure and waiver of right referred to in Article 54 paragraph 1 of this Law.
- (2) The extradited person will be questioned summarily on his personal circumstances, nationality and relations towards the requesting state, whether he objects to arrest or extradition and for what reasons. The extradited person's attorney may be present during questioning.
- (3) Minutes on the questioning and defence shall be kept.

*Pre-investigative Law ions*

**Article 53**

- (1) After the hearing pursuant to Article 52, paragraph 2 of this Law, the investigative judge shall carry out pre-investigative Law ions if necessary, in order to determine whether extradition preconditions are met.
- (2) If criminal proceedings are pending in the Republic of Croatia against the extradited person, due to the same or other criminal offence, the investigative judge shall note that in the official records.

*Simplified extradition procedure*

**Article 54**

- (1) Extradited person may give consent to be surrendered to the requesting state pursuant to the simplified extradition procedure, as well as waive the right referred to in Article 40 paragraph 2 of this Law, after which the competent court shall approve his extradition, unless there are reasons to the contrary.
- (2) Consent and waiver referred to in paragraph 1 of this Article shall be entered into the minutes before a competent court pursuant to the Criminal Procedure Law, in a way which proves that the extradited person acted voluntarily in this and was fully aware of the consequences.
- (3) Consent and waiver referred to in paragraph 1 of this Article are irrevocable.
- (4) The competent court shall notify the Ministry of Justice on the consent referred to in paragraph 1 of this Article without delay. The Ministry of Justice will, at latest within 10 days as of the extradited person's detention, notify the requesting state, which is not obliged to deliver the request for extradition in that case.
- (5) If the extradited person gave his consent referred to in paragraph 1 of this Article, the court shall, after the expiry of the deadline referred to in paragraph 4 of this Article, carry out a simplified extradition procedure if the request for extradition has not been received yet.
- (6) If the extradited person gave his consent referred to in paragraph 1 after the expiry of the deadline referred to in paragraph 4 of this Article, and the request for extradition was received in the meantime, the competent court may carry out a simplified extradition procedure.
- (7) Simplified extradition procedure has equal effects of extradition and is subject to the same conditions. The requesting state shall be warned about this.

*Resolution refusing the request for extradition*

**Article 55**

- (1) If the competent court finds that statutory preconditions for extradition have not been met, it shall issue a resolution refusing the request for extradition and deliver it without delay to the Supreme Court of the Republic of Croatia, which will either confirm, repeal or reverse the resolution after hearing the competent state attorney.
- (2) A final resolution refusing the extradition shall be delivered to the Ministry of Justice, which will notify the requesting state thereof.

*Resolution allowing extradition*

**Article 56**

- (1) When the judges' panel of the competent court finds that the statutory preconditions for extradition have been met, it shall issue a resolution to that effect.
- (2) An appeal may be lodged against this resolution within 3 days. The Supreme Court of the Republic of Croatia shall decide on the appeal.

*Resolution of the Minister of Justice*

**Article 57**

- (1) A final resolution determining that the statutory preconditions for extradition have been met, shall be delivered together with the judicial record to the Ministry of Justice.
- (2) The Minister of Justice shall issue a resolution whereby extradition is either allowed or not.
- (3) In the resolution allowing the extradition, the Minister of Justice shall state the following:
  1. that the extradited person may not be criminally prosecuted for another criminal offence committed anterior to extradition, unless he waived this right pursuant to Article 40 paragraph 2 of this Law,
  2. that a punishment may not be imposed upon an extradited person for another criminal offence anterior to extradition, unless he waived this right pursuant to Article 40 paragraph 2 of this Law,
  3. that the extradited person may not be extradited to a third state for criminal prosecution or enforcement of the prison sentence for an offence committed anterior to extradition, without the permission of the Minister of Justice of the Republic of Croatia.
- (4) In addition to the aforementioned conditions, the Minister of Justice may impose other extradition preconditions to the requesting state in a resolution referred to in paragraph 2 of this Article.
- (5) The resolution of the Minister of Justice referred to in paragraph 2 of this Article may not be appealed.

*Enforceability of the resolution on extradition*

**Article 58**

Resolution on extradition shall become enforceable:

1. when the Minister of Justice issues a resolution provided for in Article 57 paragraph 2 of this Law,
2. in case referred to in Article 54 of this Law, when the extradited person expressly agrees to be extradited.

*Enforcement of the extradition*

**Article 59**

- (1) The Ministry of Interior is in charge of enforcement of the resolution on extradition, which will agree with the competent authority of the requesting state on the place and time of surrendering the extradited person.
- (2) Surrender of the extradited person must be executed at latest within 2 months as of the enforceability of the resolution on extradition.

(3) If the requesting state does not take over the extradited person within eight days as of the agreed day of surrender referred to in paragraph 1 of this Article, the extradited person shall be released from detention. This deadline may be prolonged for the maximum of 30 days based on a justified request of the requesting state.

*Postponed surrender and temporary extradition*

**Article 60**

(1) Enforcement of the extradition may be postponed until the completion of the criminal proceedings carried out for another criminal offence in the Republic of Croatia against the extradited person, or until the extradited person completes serving the prison sentence in the Republic of Croatia or a security measure of deprivation of liberty.

(2) Temporary extradition may be allowed if it will not harmfully influence the criminal proceedings pending before a domestic court and if the requesting state guaranteed to keep the extradited person in detention during his stay in that state and to return the extradited person to the Republic of Croatia within the term determined by the Ministry of Justice.

**Article 61**

The Republic of Croatia shall bear the costs of bringing the extradited person from the requested state, and in case of extradition abroad, the Republic of Croatia shall bear the costs of detention and transport of the extradited person to the agreed location of surrender in the Republic of Croatia.

**Chapter IV. TAKING OVER AND SURRENDERING PROCEEDINGS**

**Part One: PRECONDITIONS**

**Article 62**

Upon request of a foreign judicial authority, the domestic judicial authority may take over carrying out criminal proceedings for a criminal offence committed abroad:

1. when extradition is not allowed,
2. if a foreign judicial authority stated that it shall not further criminally prosecute the prosecuted person after the final decision of the domestic judicial authority.

**Article 63**

(1) Request of a foreign judicial authority to undertake criminal prosecution against a Croatian national or a person domiciled in the Republic of Croatia for an offence committed abroad is transmitted to the competent state attorney in whose jurisdiction that person is domiciled, accompanied by the criminal record.

(2) If a foreign judicial authority was submitted a property-related claim in the criminal proceedings that were taken over, the domestic judicial authority shall act as though such a request was submitted in the proceedings pending before a domestic court.

(3) A foreign judicial authority that transmitted the request shall be notified through the Ministry of Justice on the refusal to take over criminal prosecution, i.e. final verdict issued in the taken over criminal proceedings.

*Governing law and trial in absentia*

**Article 64**

(1) An offence committed abroad shall be tried as though committed in the Republic of Croatia.

(2) Foreign law shall apply when it is more lenient for the prosecuted person.

(3) Trial in absentia is not allowed.

*Surrender of the criminal proceedings*

**Article 65**

(1) If a foreigner domiciled in a foreign country committed an offence in the territory of the Republic of Croatia, criminal prosecution may be surrendered to that country, provided it does not object thereto.

(2) Criminal prosecution may be surrendered for offences with prescribed punishment up to ten years of imprisonment.

**Part Two: PROCEDURE**

**Article 66**

Request to surrender criminal prosecution, prepared pursuant to Article 8 paragraph 3 of this Law, shall be supported by the criminal record and all collected evidence.

**Article 67**

(1) Prior to rendering a decision to conduct an investigation, the competent state attorney issues the decision on surrendering the proceedings.

(2) During the investigation, the decision referred to in paragraph 1 of this Article is rendered by an investigative judge upon a proposal of the competent State Attorney. This decision is rendered by the judicial panel until the commencement of the trial.



(3) If the injured party is a Croatian national, surrender is not allowed if he objects thereto, unless security for realization of his property-related claim was deposited.

(4) If the prosecuted person is in detention, the foreign state shall be requested to answer within the latest of fifteen days whether it surrenders criminal prosecution.

#### **Article 68**

Each investigative Law ion undertaken by a foreign judicial authority pursuant to the law of the requesting state in the criminal proceedings shall be equal to the corresponding investigative Law ion pursuant to the law of the Republic of Croatia, unless contrary to the provisions of Article 4 of this Law .

#### **Article 69**

(1) Costs incurred in the surrendered criminal proceedings determined by a foreign judicial authority shall be added to the costs of proceedings incurred in the criminal proceedings before a domestic judicial authority. The costs shall not be remunerated to the foreign judicial authority.

(2) In case of surrender of criminal prosecution, the domestic judicial authority shall notify the foreign judicial authority on the costs of proceedings incurred in the criminal proceedings before a domestic judicial authority, which will not request remuneration of such costs.

### **Chapter V: TAKING OVER ENFORCEMENT OF FOREIGN CRIMINAL VERDICTS**

*Taking over enforcement by the Republic of Croatia*

#### **Article 70**

(1) A domestic court shall act upon the request of the requesting state for enforcement of the criminal verdict of a foreign court and it shall enforce a final verdict in respect of the sanction determined by a foreign court, in a way that it shall determine a sanction in the verdict pursuant to the criminal law of the Republic of Croatia.

(2) When evaluating punishability and possibility of criminal prosecution, the domestic court is bound by the facts determined in the foreign court's verdict, unless it concerns the fact s that are contrary to the public morals and legal order of the Republic of Croatia.

#### **Article 71**

(1) The domestic court shall include in the statement of the verdict referred to in Article 70 paragraph 1 of this Law, a full statement of the decision and the name of the court from the verdict of a foreign court and it shall determine a sanction. In the statement of reasons, it shall state the reasons that served as basis to pronounce the sanction.

(2) An appeal against the verdict may be lodged by the State Attorney and the convicted person or his/her defending attorney.

#### **Article 72**

(1) Geographical jurisdiction of the court referred to in Article 70 of this Law is determined according to the last domicile of the convicted person in the Republic of Croatia, and if the convicted person had no domicile in the Republic of Croatia, according to the place of birth of the person concerned. If the convicted person had no domicile, nor was born in the Republic of Croatia, the Supreme Court of the Republic of Croatia shall determine one of the courts having subject matter jurisdiction to act as the trial court.

(2) Subject matter jurisdiction is prescribed by a special law.

(3) The competent court shall reach a decision in a judicial panel, without the presence of the parties.

*Enforcement of a foreign sanction*

#### **Article 73**

(1) A sanction pronounced by a foreign judicial authority shall be enforced pursuant to domestic regulations on enforcement of criminal sanctions.

(2) Enforcement shall be discontinued if the statute of limitation for enforcement is to occur at the requesting state or if the enforcement was revoked.

(3) If only the decision concerning the costs is enforced, the requesting state shall be communicated the amount that was left after the deduction of incurred costs, subject to reciprocity.

(4) A decision of a foreign judicial authority on the costs shall be taken over and enforced if such costs are to be paid at the requesting state.

#### **Article 74**

A judicial verdict of a foreign court shall not be enforced if:

1. the statute of limitation for enforcement of punishment occurred pursuant to the Croatian law,
2. perpetrator is also subject to Croatian jurisdiction, and the perpetrator pursuant to the Croatian law may not be sentenced with a criminal sanction due to other reasons,
3. a foreign sanction was not pronounced by the competent judicial authority. In case of pecuniary fine, if it was pronounced by an administrative authority whose decisions may be appealed before a court having jurisdiction in criminal matters,

4. the convicted person in the proceedings which serve as basis for the foreign decision was not heard, i.e. was not given the opportunity to state her defence.

#### **Article 75**

Upon a request of a domestic judicial authority, the Ministry of Justice may request the foreign state to take over enforcement of the criminal verdict of a domestic court if:

1. the Republic of Croatia may not ensure enforcement of a criminal verdict of a domestic court,
2. better social rehabilitation of the convicted person would be expected due to the taken over enforcement.

#### **Article 76**

Request to take over judicial verdict composed pursuant to Article 8 paragraph 3 of this Law shall be supported by:

1. original or certified photostat copy of the judicial verdict with the certificate of its enforceability,
2. certificate of the duration of the prison sentence served at the requesting state, if needed,
3. original or a certified copy of the criminal record, if so requested by the state of enforcement.

#### **Article 77**

(1) The Minister of the Republic of Croatia approves the conditions delivered by the country of verdict in the procedure of taking over enforcement of the criminal verdict.

(2) If the Republic of Croatia has jurisdiction, and a sanction proclaimed in a foreign country is more severe than the one envisaged by the domestic law, it is possible to take over enforcement of such a sanction, if so requested by the foreign state expressly, i.e. if it refused to agree to enforcement of a criminal verdict of its court in a manner provided for in Article 70 of this Law.

#### **Article 78**

(1) If the foreign state takes over enforcement of a criminal verdict of a domestic court, the competent judicial authority shall revoke enforcement, unless the requested state notifies that it shall not carry out enforcement.

(2) The convicted person may be in detention for the purpose of securing taking over enforcement of the judicial verdict.

#### **Article 79**

A convicted person in custody in the Republic of Croatia may be subject to taking over enforcement of a criminal verdict only if he consents to this and if it may be expected that the requested state shall follow the conditions determined by the domestic competent authority

#### *Relocation of the convicted person*

#### **Article 80**

(1) The convicted person serving prison sentence in the Republic of Croatia based on the verdict of a domestic court, may submit a request to serve the sentence in the country of his nationality or domicile. The request may be submitted to the prison management where he is serving the sentence, to the first-instance court or the Ministry of Justice.

(2) The request is delivered to the Ministry of Justice, which notifies the state where the convicted person wishes to be relocated to continue serving the sentence and it carries out the procedure of relocation of the convicted person based on an international treaty or subject to reciprocity.

(3) The competent court or prison management, where the convicted person is serving sentence, shall inform the convicted person on the possibility of serving the sentence in the country of his nationality, i.e. domicile.

(4) The request may also be submitted by the state of nationality of the convicted person or where the convicted person is domiciled. The request shall be taken under consideration if the convicted person consents to be relocated.

(5) The convicted person may be relocated if at the time of receipt of the request for relocation he has to serve at least another 6 months of the sentenced punishment.

(6) Consent to the relocation of the convicted person is given by the Minister of Justice of the Republic of Croatia, with prior opinion of the State Attorney's Office.

(7) The Croatian national serving a prison sentence in a foreign country may be relocated to the Republic of Croatia to continue serving the prison sentence with the consent of the trial state and the Minister of Justice of the Republic of Croatia, based on the request addressed to the competent authority of the trial state or the Ministry of Justice of the Republic of Croatia, subject to the condition referred to in paragraph 5 of this Article.

### **Chapter VI. FINAL PROVISIONS**

#### **Article 81**

To the extent in which this Law contains no special procedural rules, the provisions of the following Law shall apply accordingly: Criminal Procedure Law, Misdemeanour Law, Law on the Office for Suppression of Corruption and Organized Crime, and the Courts Law.

## **Article 82**

Upon entry into force of this Law, the provisions of subparagraphs 1 and 2 of Article 523 of the Criminal Procedure Law shall cease to be valid (published in the Official Gazette "Narodne novine", Nos. 110/97, 27/98, 58/99, 112/99, 58/02, 143/02 and 62/03 – consolidated text).

### *Transitional provisions*

## **Article 83**

Extradition procedures pending on the day of entry into force of this Law, shall be completed pursuant to the provision of Article 523 of the Criminal Procedure Code (The Official Gazette, 110/97, 27/98, 58/99, 112/99, 58/02, 143/02 and 62/03 – consolidated text). The same shall apply to taking over of criminal proceedings and execution of foreign criminal verdicts.

## **CODE OF CRIMINAL PROCEDURE** (in force 01.01.1998, "Official Gazette", 152/08 and 76/09)

### Article 18

- (1) Where the application of criminal law depends on a prior decision concerning a question of law which falls within the jurisdiction of a court in some other type of proceedings or within the jurisdiction of some other state authority, the criminal court may decide on this question by applying the provisions regulating the evidence procedure in criminal proceedings. The decision on this question of law rendered by the criminal court shall affect only the case being tried before this court.
- (2) If the court conducting the proceedings deems that a decision of the European Court regarding the application or interpretation of regulations and measures of the European Union is necessary for the decision on the question from paragraph 1 of this Article, it shall withhold the proceedings and submit a request to the European Court to reach the decision.

### *Jurisdiction of courts / territorial jurisdiction*

### Article 22

- (1) If the place of commission of a criminal offence is unknown or if this place is outside of the territory of the Republic of Croatia, the court within the territory of which the defendant's permanent or temporary residence is located shall have jurisdiction.
- (2) If proceedings are already pending in the court of the defendant's permanent or temporary residence, the court shall retain jurisdiction even if the place of commission of the criminal offence has been found out.
- (3) If neither the place of commission of the criminal offence nor the permanent or temporary residence of the defendant is known, or if both are outside the territory of the Republic of Croatia, the court within the territory of which the defendant was apprehended or turned himself in shall have jurisdiction.

### Article 23

If a person commits criminal offences both in the Republic of Croatia and abroad, the court which has jurisdiction over the offence committed in the Republic of Croatia shall have jurisdiction.

### Article 24

If according to the provisions of this Code it cannot be established which court has territorial jurisdiction, the Supreme Court of the Republic of Croatia shall designate one of the courts with subject matter jurisdiction to conduct proceedings.

### *Collection, use and protection of personal data for the use in criminal proceedings*

## **Article 186**

- (1) The police, the State Attorney and the court shall collect, store and process personal data of citizens that are important for the purpose of criminal proceedings, paying attention that it is used as appropriate to the nature of the data required in a specific case. For every collection of personal data, these authorities shall keep a register according to special regulations.
- (2) The personal data collected for the requirements of criminal proceedings may be delivered to the state administration bodies pursuant to a special law, and to other legal entities only if the State Attorney or the court determines that they need such data for a purpose prescribed by law. During delivery, such legal entities shall be warned that they are bound to apply measures for the protection of the data of the person to which they apply.
- (3) The personal data from paragraph 1 of this Article may, according to regulations, be used in other criminal proceedings, in other proceedings for punishable Law s in the Republic of Croatia, in proceedings of international criminal law assistance and international police cooperation.
- (4) The minister responsible for justice shall bring regulations on automated collections of personal data for the use of the State Attorney and courts.

### *Legal assistance*

## **Article 191**

- (1) The police, the investigator, the State Attorney and the court may, for the purpose of criminal proceedings, request assistance from the courts, investigators, State Attorneys, state administration

authorities and other state authorities. These authorities shall respond to the request in the shortest possible time, and shall inform about possible obstacles without delay. If necessary, a copy of a part of the criminal file may be submitted to them.

- (2) The state administration authorities and other state authorities may refuse the request from paragraph 1 of this Article, with the decision accompanied by the statement of reasons if the fulfilment of such request would mean a breach of the obligation to protect the secret data until the authorised body cancels such obligation.
- (3) The police, the State Attorney and Courts may submit the personal data collected according to this Law to the state administration authorities including the security services and to their supervisory bodies.
- (4) If criminal proceedings (Article 17) are initiated against a civil servant or employee, the court shall report this to the head of the authority or the institution within eight days.

#### **Article 192**

- (1) Except for cases specified in this Law, the court may, by a written order, order that the evidentiary hearing is conducted by means of a closed technical device for remote connection (audio-video conference).
- (2) The order shall include the place and time of the audio-video conference and the names and addresses of the persons that are to be questioned. The summons to the witness and the defendant shall be sent pursuant to Article 175 paragraphs 1 and 2 of this Law.
- (3) The order may specify that the person who keeps the objects that must be seized pursuant to the Penal Code or which may be used to determine facts in criminal proceedings, to show the objects upon the request of the court during the audio-video conference, and after it, to hand them over to the court pursuant to the provision of Article 261 of this Law.

#### **Article 193**

- (1) The court that requested the issue of the order may, after determining the data from paragraph 2 of this Article, pose questions directly to the interrogated person. The parties may be present at the audio-video conference and take part in it pursuant to provisions of Article 292 paragraph 3 of this Law. The defendant in pre-trial detention or investigative detention shall be enabled in an appropriate manner to follow up the audio-video conference, to pose questions and make comments.
- (2) An expert person operating the devices must be present at the audio-video conference.

#### **Article 194**

- (1) The authority conducting the proceedings shall make a record on the audio-video conference, indicating the time and place of the Law ion, persons who were present, type and state of technical devices for remote connections and the expert person who operated the device. This record may be made by a court advisor or a court apprentice.
- (2) The authority conducting the proceedings may also comply with a special request of an international body regarding the form and the contents of the audio-video conference or with another special request of an international body according to the regulations of a special law or an international contract.
- (3) The minister responsible for justice shall bring regulations on procurement and maintenance of closed technical devices for audio–video conference in the courts.

#### **Article 195**

The State Attorney or the police may check the alibi and other important factors for the institution and conducting of the criminal proceedings by means of a telephone link that allows a simultaneous communication to the interrogated persons (telephone conference).

#### **Article 196**

- (1) The records of the telephone conference must contain the data on the identity of the persons in the telephone communication, the data on the status in which the person gives the statement, and, depending on that status, the appropriate personal data.
- (2) The recording of the telephone conference from paragraph 1 of this Article may be used as evidence in criminal proceedings:
  - 1) if the person that was interrogated as a witness was warned according to Article 288, paragraph 3 and 289 of this Law and warned about the recording, and accepted that the recording is used as evidence;
  - 2) if the defendant was previously instructed on his rights according to Article 239, paragraph 1 and Article 275, paragraph 3 of this Law,
  - 3) if the defence counsel was present when the defendant was interrogated.

#### **Article 198**

- (1) If criminal proceedings have been instituted against an alien, the court and other state authorities shall proceed in conformity with the provisions of the corresponding consular convention which is in force in the Republic of Croatia.

#### **Article 200**

- (2) As regards exemptions from the criminal prosecution of persons enjoying immunity in the Republic of Croatia, the rules of international law shall apply.
- (3) In the case of doubt as to whether a person enjoys immunity pursuant to the rules of international law, the court shall ask for clarification from the ministry responsible for foreign affairs.

#### **Article 201**

Under the conditions provided for in the international agreement and a special law, the joint investigation may be undertaken for criminal offences provided for by this agreement and a special law.

#### *Special collection of evidence*

#### **Article 332**

- (1) If the investigation cannot be carried out in any other way or would be accompanied by great difficulties, the investigating judge may, upon the written request with a statement of reasons of the State attorney, order against the person against whom there are grounds for suspicion the he committed or has taken part in committing an offence referred to in Article 334 of this Law, measures which temporarily restrict certain constitutional rights of citizens as follows:
  - 1) surveillance and interception of telephone conversations and other means of remote technical communication;
  - 2) interception, gathering and recording of electronic data;
  - 3) entry on the premises for the purpose of conducting surveillance and technical recording at the premises;
  - 4) covert following and technical recording of individuals and objects;
  - 5) use of undercover investigators and informants;
  - 6) simulated sales and purchase of certain objects, simulated bribe-giving and simulated bribe-taking;
  - 7) offering simulated business services or closing simulated legal business;
  - 8) controlled transport and delivery of objects from criminal offences.
- (2) By way of exception, when circumstances require that the Law ions are to commenced immediately, the order from paragraph 1 of this Article may be issued by the State Attorney prior to commencement of the investigation for the term of twenty-four hours. The State Attorney must deliver the order with a note on the time of issue and a statement of reasons to the investigating judge within eight hours from the issue. The investigating judge shall decide immediately on the legality of the order. If the investigating judge accepts the order of the State attorney, he shall proceed pursuant to paragraph 1 of this Article. If the investigating judge denies the order, the State Attorney may file an appeal within eight hours. The panel shall decide on the appeal within twelve hours.
- (3) If the panel does not approve the order, it shall be ordered by a ruling that the Law ions shall be immediately ceased and the data collected pursuant to the order of the State Attorney shall be handed over to the investigating judge who will destroy them. The investigating judge shall make a record on the destruction of the data.
- (4) Law ions referred to in paragraph 1 item 1 of this Article may be ordered against persons against whom there are grounds for suspicion that that he delivers to the perpetrator or receives from the perpetrator of the offences referred to in Article 334 of this Law information and messages in relation to offences or that the perpetrator uses their telephone or other telecommunications devices, who hide the perpetrator of the criminal offence or help him from being discovered by hiding the means by which the criminal offence was committed, traces of the criminal offences or objects resulting or acquired through the criminal offence or in any other way.
- (5) Under the conditions referred to in paragraph 1 of this Article, the measures referred to in paragraph 1 items 1, 2, 3, 4, 6, 7 and 8 of this Article may with his written consent be applied to means, premises and objects of that person.
- (6) In case there is no knowledge about the identity of the accomplices in the criminal offence, the measure referred to in paragraph 1 item 8 of this Article may be determined in accordance with the object of the criminal offence.
- (7) The application of measures referred to in paragraph 1 items 5 and 6 of this Article should not constitute an instigation to commit a criminal offence.

#### **Article 333**

- (1) Recordings, documents and objects obtained by the application of the measures referred to in Article 332 paragraph 1 item 1 to 8 of this Law may be used as evidence in criminal proceedings.
- (2) An undercover agent and an informant may be interrogated as witnesses on the content of discussions held with the persons against whom the measures referred to in Article 332 paragraph 1 items 5 to 8 of this Law are imposed, as well as all accomplices in the criminal offence for whose disclosure and evidence collecting the measure was imposed and their statements may be used as evidence in the proceedings.
- (3) A ruling and evaluation on inadmissibility of evidence may not be based exclusively on the witness testimony referred to in paragraph 2 of this Article.

**Article 334**

- (1) Special evidence collecting Law ions referred to in Article 332 paragraph 1 of this Law may be ordered for the following criminal offences referred to in the Penal Code:
- 1) offences against the Republic of Croatia (Chapter Twelve), offences against values protected by international law (Chapter Thirteen), against sexual freedom and sexual morality (Chapter Fourteen) and against the Armed Forces of the Republic of Croatia (Chapter Twenty-Six) punishable by imprisonment for a term of five years or more;
  - 2) murder (Article 90), kidnapping (Article 125), pandering (Article 195), child pornography on a computer system or network (Article 197a), robbery (Article 218 paragraph 2), breach of confidentiality, integrity and availability of electronic data, programs and systems (Article 223), computer forgery (Article 223a), computer fraud (Article 224a), fraud to the detriment of the European Communities (Article 224b) extortion (Article 234), blackmail (Article 235), serious criminal offences against public safety (Article 271), counterfeiting of money (Article 274), money laundering (Article 279), receiving a bribe in economic transactions (Article 294a), offering a bribe in economic transactions (Article 294b), avoiding customs control (Article 298), obstruction of evidence (Article 304), duress against an official engaged in the administration of justice (Article 309), association for the purpose of committing a criminal offence (Article 333), as well as for criminal offences committed by that group or criminal organisation in concurrence, illicit possession of weapons and explosive substances (Article 335), abuse of office and official authority (Article 337), abuse in performing governmental duties (Article 338), illegal intercession (Article 343), bribe-taking (Article 347) and bribe-giving (Article 348);
  - 3) abuse of children or minors in pornography (Article 196), introducing pornography to children (Article 196), violation of copyright and of the rights of performing artists (Article 229), illicit use of an author's work or an artistic performance (Article 230), violation of the rights of producers of audio or video recordings and the rights related to radio broadcasting (Article 231), violation of patent rights (Article 232), infringement of industrial property rights and unauthorized use of another's company name (Article 285), if these criminal offences are committed through use of computer systems or networks;
  - 4) offences punishable by long-term imprisonment.
- (2) Special evidence collecting measures referred to in Article 332 paragraph 1 of this Law may be ordered also for criminal offences committed to detriment of children or minors.

**Article 335**

- (1) The order referred to in Article 332 paragraph 1 of this Law shall state the available data on the person against whom the measures are to be applied, the facts justifying the necessity for applying the measures and the term for their duration that should be proportionate to the accomplishment of the goal, as well as the manner, the scope and the place of execution of the measure. The measures shall be executed by the police authorities. Officials and responsible persons taking part in the decision-making process and execution of the measures referred to in Article 332 of this Law shall be bound to keep the confidentiality of the information that came to their knowledge in the process.
- (2) The technical operation centre for the supervision of telecommunications that carries out technical coordination with the provider of telecommunication services in the Republic of Croatia as well as providers of telecommunication services shall be bound to provide the necessary technical assistance to the police authorities. In case of proceeding contrary to this obligation, the investigating judge shall upon the motion with a statement of reasons of the State Attorney impose a fine on a provider of telecommunication services in an amount of up to HRK 1,000,000.00, and on a responsible person in the technical operative centre for the supervision of telecommunications that carries out technical coordination and on a provider of telecommunication services in the Republic of Croatia in an amount of up to HRK 50,000.00, and if thereafter the ruling is not complied with, the responsible person may be punished by imprisonment until the ruling is executed, but not longer than one month. The panel shall decide on the appeal against the ruling on the fine and imprisonment. The appeal against the ruling on the fine and imprisonment shall not stay its execution.
- (3) Special evidence collecting measures may last up to six months. Upon the motion of the State Attorney the investigating judge shall, on account of important reasons, prolong the duration of such measures for a term of another six months. In specially complex cases, the investigating judge may prolong the measures for a further term of six months. If he denies the motion of the State Attorney to prolong the measures, the investigating judge shall issue a ruling against which the State Attorney may file an appeal within eight hours. The panel shall decide on the appeal within twelve hours.
- (4) As soon as the conditions referred to in Article 332 paragraph 1 of this Law cease to exist, the investigating judge is bound to order the vacation of the measures undertaken. If the State Attorney desists from prosecution or if the data and information obtained by the application of the measures are not relevant for proceedings, they shall be destroyed under the supervision of the investigating judge, who will draw up a separate record thereon.
- (5) The order referred to in paragraph 1 of this Article shall be kept in a separate cover. After the termination of the measure and even before that, the order on measure may be delivered to the person the measure was ordered against if he so requests, provided that this is to the benefit of the proceedings.

- (6) If in the course of the measures referred to in Article 332 paragraph 1 of this Law, data and information relating to another offence and perpetrator referred to in Article 334 of this Law are recorded, that part of the recording shall be copied and delivered to the State Attorney and may be used as evidence in the proceedings for that criminal offence.
- (7) The provisions of Article 75, 76 and 114 of this Law shall apply to the conversations of the defendant with the defence counsel in an appropriate manner.
- (8) If the measures referred to in Article 332 of this Law are undertaken contrary to the provision of Article 332 of this Law, the evidence deriving from the data and information obtained in this manner may not be used as evidence in the criminal proceedings.

#### **Article 336**

- (1) The State Attorney and the investigating judge shall prevent in an appropriate manner (a transcript of the record or official notes without personal data therein, excluding the official note from the file etc.) unauthorized persons as well as the suspect and his defence counsel from establishing the identity of the persons who carried out measures referred to in Article 332 paragraph 1 items 4 and 5 of this Law. If these persons are interrogated as witnesses, the court may proceed in accordance with the provisions referred to in Articles 294 to 299 of this Law.
- (2) Persons who in any way find out data on the content of measures or persons who participated in carrying out the measures referred to in Article 332 of this Law shall be bound to keep such data confidential.

#### **Article 337**

- (1) Measures referred to in Article 332 of this Law shall be carried out by the police authorities. The police authorities shall draw up daily reports on the process of execution and the documentation of the technical records, which they send to the State Attorney upon his request.
- (2) Upon the termination of the measure, the police authorities draw up a special report for the State Attorney's Office and the investigating judge stating as follows:
  - 1) time of the commencement and time of the termination of the measure;
  - 2) number and identity of persons covered by the measure;
- (3) The police authorities shall draw up the documents on technical recordings in two copies. One copy shall be kept in the police archive. The other copy enclosed with a special report shall be handed over by the police authorities to the State Attorney together with collected recordings and documentation.
- (4) Using undercover agents includes the right of the undercover agent to enter a person's home if the conditions are met as prescribed by legal regulations on police officers' entering a person's home without a court order.
- (5) If beside the conditions referred to in Article 332 paragraph 1 of this Law evidence exists providing grounds for suspicion that as a result of preparing criminal offences stated in Article 334 of this Law particularly serious criminal offences are to be committed or that some of them have already been committed, the investigating judge may determine that the undercover agent, apart from entering a person's home, may use technical equipment to record conversations that are not public. Should the investigating judge deny the motion he shall issue a ruling. The State Attorney may file an appeal against the ruling within eight hours. The panel shall decide on the appeal within twelve hours.
- (6) The application of measures referred to in Article 332 paragraph 1 of this Law shall cease as soon as the reasons lapse on the basis of which they were ordered. The State Attorney and the court shall by virtue of the office pay attention to the presence of the reasons on the basis of which the measures were ordered.
- (7) The minister responsible for internal affairs, with a prior consent of the minister responsible for justice, shall bring regulations governing the method for conducting Law ions referred to in Article 332 of this Law.

#### **Article 338**

- (1) Recordings, documents and objects obtained by carrying out the measures from Article 332 paragraph 1 of this Law may be used as evidence only in proceedings against the person referred to in Article 332 paragraph 1, or Article 337 paragraph 5 of this Law.
- (2) A complete recording, record and documentation shall be kept sealed in the State Attorney's office. When this is possible under circumstances, upon the motion of the State Attorney the investigating judge shall order that only those parts of the recording, record and documentation are excluded for the case file which refers to that criminal proceeding.
- (3) For this purpose the State Attorney shall hand over to the investigating judge a motion with a statement of reasons and a complete recording that the investigating judge shall return after the exclusion of the part of the recording referring to that criminal procedure. The exclusion shall be conducted by an expert assistant under supervision of the investigating judge.
- (4) Upon the motion of the defence counsel the complete recording, record and documentation shall be either reproduced or read out loud.

**Article 339**

- (1) The investigating judge may, upon the motion of the State Attorney, order that postal and other communication agencies retain and deliver to, with the receipt of delivery, letters, telegrams and other shipments addressed to the defendant or sent by the defendant if circumstances exist which indicate that it is likely that these shipments can be used as evidence in the proceedings. The order shall contain information referred to in Article 335 paragraph 1 of his Law.
- (2) Temporary seizure may last four months at longest and upon a motion with a statement of reasons of the State Attorney, the investigating judge may prolong the term for further two months.
- (3) The measure referred to in paragraph 1 of this Article may be ordered for the following criminal offences referred to in the Criminal Code:
  - 1) offences against values protected by international law (Chapter Thirteen) punishable by imprisonment for a term of five years or more, manslaughter (Article 90), aggravated murder (Article 91), kidnapping (Article 125 paragraphs 2 and 3), treason (Article 135), acceding to occupation or capitulation (Article 136), endangering state independence (Article 137), assassination of the highest state officials (Article 138), kidnapping of the highest state officials (Article 139), anti-state terrorism (Article 141), disclosure of state secrets (Article 144 paragraphs 1 and 3), association for the purpose of committing criminal offences against the Republic of Croatia (Article 152), preparation of criminal offences against the Republic of Croatia (Article 153), money laundering (Article 279).
  - 2) abuse of children or minors in pornography (Article 196), introducing pornography to children (Article 196), violation of copyright and of the rights of performing artists (Article 229), illicit use of an author's work or an artistic performance (Article 230), violation of the rights of producers of audio or video recordings and the rights related to radio broadcasting (Article 231), violation of patent rights (Article 232), infringement of industrial property rights and unauthorized use of another's company name (Article 285), if these criminal offences are committed through use of computer systems, temporary seizure may last up to one year at longest,
  - 3) association for the purpose of committing criminal offences (333), as well as for offences committed by that group or criminal organization in concurrence.
- (4) The State Attorney may order only the retaining of shipments, however, the organisations referred to in paragraph 1 of this Article are bound to cease the retaining should they not receive a ruling of the investigating judge within three days from the receipt of the order.
- (5) The retained shipments shall be opened by the State Attorney in the presence of two witnesses. When opening, care shall be taken not to damage the seals, while the covers and the addresses shall be preserved. A record shall be drawn up on the opening.
- (6) If the interests of the proceedings so allow, the defendant or the addressee may be fully or partially informed of the contents of the shipment, which may be delivered to him as well. If the defendant is absent and if the justified interest exists, the contents of the shipments shall be communicated or the shipment shall be delivered to one of his relatives, and if there are none, the shipment shall be returned to the sender unless this would prejudice the interests of the proceedings.
- (7) The provisions of Articles 1 to 5 of this Article shall not apply to letters, telegrams and other shipments between the defendant and his defence counsel.
- (8) If it has been proceeded contrary to paragraphs 1 to 5 of this Article, evidence that were brought to attention through data so collected may not be used in the criminal proceedings.

**Article 340**

- (1) The police authorities may compare personal data of citizens kept in a database and other registers with police data records, registers and automatic data processing bases, provided that there are grounds for suspicion that a criminal offence subject to public prosecution has been committed. Information thus collected shall, along with a report on this to the State Attorney, be erased from the above mentioned records as soon as it ceases to be necessary for successfully conducting proceedings, but not later than twelve months from the day when they are stored. Upon the motion of the State Attorney the investigating judge may exceptionally prolong this term for three months if it is likely that in such a manner a search for a certain person or object may be successfully completed.
- (2) Should the investigating judge deny the motion from paragraph 1 of this Article, he shall issue a ruling. The State Attorney may file an appeal against the ruling.

**LAW ON THE OFFICE FOR THE PREVENTION OF CORRUPTION AND ORGANISED CRIME**  
(September 2001)

**Article 41**

At the request of the Head, or ex officio, the investigative judge may, besides the measures referred to in Article 180 para. 1 of the Criminal Procedure Law against the person for whom there is ground for suspicion that he/she alone or with others plans criminal offences referred to in Article 21 para 1 subparas. 2 and 3 hereof - and the extent of the elaboration of such plans and the connections among such persons indicate that they pose a serious threat to the legal system - order the measures of supplying simulated professional services or concluding simulated legal transactions, if the police authorities cannot reveal, prevent or prove such criminal offence in any other way, or if this would entail difficulties that would be out of proportion.



Substantiated writ ordering the measure and including the available information on the person against whom the measure is to be implemented, description of the criminal offence, the manner, scope, venue and duration of the measure that shall be consistent with reaching the goal of the measure, may be extended three months into its implementation by the same period if justified by the circumstances that surfaced subsequently.

This is to be decided by the Panel mentioned in Article 20 para. 2 of the Criminal Procedure Law, particularly taking into account whether the reached goal of the measure is consistent with the restriction of personal rights of the citizen, or whether the same results could be reached in another, less drastic investigative means and measures.

## **(4) KOSOVO**

### **THE CONSTITUTION (15 June 2008)**

#### **Article 19:**

1. International agreements ratified by [...] Kosovo become part of the internal legal system after their publication in the Official Gazette of [...] Kosovo. They are directly applied except when they are not self-applicable and the application requires the promulgation of a law.
2. Ratified International Agreements and the legally binding norms of the international law have superiority over the laws of [...] Kosovo.

### **THE PROVISIONAL CRIMINAL PROCEDURE CODE OF KOSOVO (6 April 2004)**

#### **Extradition**

#### **Article 518/1**

Proceedings for the transfer to a foreign jurisdiction of a foreign national who is a defendant or a convicted person shall be initiated upon the request of a foreign country.

#### **Article 532/1**

If a foreign country requests extradition from another foreign country and the person to be extradited is to be escorted through the territory of Kosovo, the competent authority may upon request of the country concerned grant the escort, provided that the person is a foreign national, that the extradition does not take place for a political act, that such act shall not be considered to include a criminal offence under Articles 116 through 145 of the Provisional Criminal Code, and that the extradition is not for any reason contrary to international law or international human rights standards.

#### **Article 518/2**

- (1) The request shall be filed through diplomatic channels.

#### **Article 518/3**

The request for transfer shall enclose:

- 1) The means for identifying the defendant or convicted person (accurate description, photographs, fingerprints and similar);
- 2) A certificate or other data on the citizenship of the foreign national;
- 3) The indictment, or judgment, or ruling on detention or another equivalent document, in the original or a certified copy. These papers shall contain: the name and surname of the person whose transfer is requested and other data necessary to establish his or her identity, the description of the act, the legal qualification of the criminal offence and the evidence on which the suspicion rests; and
- 4) An extract from the criminal law of the foreign country to be applied, or which was applied, against the defendant in regard to the act which prompted the request for transfer; if the act was committed in a third country, an extract from the criminal law of that country.

#### **Article 532**

- (1) If a foreign country requests extradition from another foreign country and the person to be extradited is to be escorted through the territory of Kosovo, the competent authority may upon request of the country concerned grant the escort, provided that the person is a foreign national, that the extradition does not take place for a political act, that such act shall not be considered to include a criminal offence under Articles 116 through 145 of the Provisional Criminal Code, and that the extradition is not for any reason contrary to international law or international human rights standards.
- (2) The request to escort through the territory of Kosovo shall contain all data specified in Article 518 of the present Code.
- (3) On the basis of reciprocity, the costs of escorting such person through the territory of Kosovo shall be charged to the budget

#### **Article 519/1**

The competent authority shall transmit the request for the transfer of a foreign national through the competent public entity in the field of judicial affairs to the pre-trial judge of the district court in whose territory the foreign national currently resides or in whose territory he or she is to be found.

#### **Article 526**

- (1) In the ruling by which he or she grants the transfer of a foreign national the competent authority shall state that:
  - 1) The foreign national may not be prosecuted for another criminal offence committed prior to the transfer;
  - 2) He or she may not be punished for another criminal offence committed prior to his or her transfer;

- 3) A more severe punishment than the one by which he or she was punished may not be imposed upon him or her; and
  - 4) He or she may not be surrendered to a third country for prosecution for a criminal offence which he or she had committed before his or her transfer was granted.
- (2) In addition to these conditions the competent authority may order also other conditions for transfer.

#### **Article 514**

If a foreign national who permanently resides in a foreign country commits a criminal offence on the territory of Kosovo, all files for criminal prosecution and adjudication may, beside the conditions under Article 517 of the present Code, be surrendered to the foreign country for the purpose of criminal prosecution and adjudication, if it agrees to receive them.

- (2) The decision to surrender files in the criminal proceedings is rendered during the pretrial proceedings by the three-judge panel upon the motion of the public prosecutor.
- (3) The surrender of criminal files may be allowed where criminal offences punishable by imprisonment of up to ten years are involved, as well as in the case of a criminal offence against the security of public traffic.
- (4) The surrender of criminal files shall not be allowed if the injured party is a resident of Kosovo and he or she opposes it, except if his or her property claim has been secured.
- (5) If the accused is in detention on remand, the foreign country shall be requested by the fastest means to report within thirty days whether it will undertake prosecution.

#### **The request for initiating and transferring of criminal proceedings**

#### **Article 533**

Notwithstanding Article 517 subparagraph 1 of the present Code, a resident of Kosovo may be transferred to a foreign jurisdiction if:

- 1) His or her transfer is permitted by an international agreement; and
- 2) All the prerequisites for transfer set forth in Article 517 of the present Code, except for subparagraph 1, are met. In such case the provisions of the present chapter shall apply *mutatis mutandis*.

#### **Procedures for mutual legal assistance**

#### **Article 507/3**

- (3) On the basis of reciprocity or if so determined by an international agreement, international legal assistance in criminal matters may be exchanged directly between an organ of Kosovo and a foreign organ which participates in preliminary proceedings and in criminal proceedings, wherein modern technical assets, in particular computer networks and aids for the transmission of pictures, speech and electronic impulses may be used.

#### **Article 507/1**

- (1) A request of a domestic court for legal assistance in criminal matters shall be transmitted to foreign agencies through diplomatic channels. A foreign request for legal assistance from domestic courts shall be transmitted in the same manner.

#### **Transfer of sentenced person and the validity of foreign decisions**

#### **Article 517**

The prerequisites for the transfer of a person to a foreign jurisdiction are:

- 1) That the person whose transfer to a foreign jurisdiction is requested is a foreign national;
- 2) That the act which prompted the request for the transfer was not committed on the territory of Kosovo or against a resident of Kosovo;
- 3) That the act which prompted the request for the transfer constitutes a criminal offence under the applicable law in Kosovo and under the law of the jurisdiction where it was committed;
- 4) That under the applicable law in Kosovo criminal prosecution or the execution of punishment was not barred by the period of statutory limitation before the foreign national was detained on remand or examined as a defendant;
- 5) That the foreign national whose transfer is requested has not already been finally acquitted or convicted by a domestic court of the criminal offence for which his or her transfer is sought, that criminal proceedings are not being conducted in Kosovo against him or her for a criminal offence set forth in Article 100 of the Provisional Criminal Code and, in the event that criminal proceedings have been initiated for an act committed against a resident of Kosovo, that the property claim of the injured party has been secured;
- 6) That the identity of the person whose transfer is requested has been established;
- 7) That there is sufficient evidence to support a well-grounded suspicion that the foreign national whose transfer is requested has committed the particular criminal offence, or that a final judgment exists thereon;
- 8) That the transfer is not sought for a crime for which capital punishment is prescribed unless the state seeking the transfer provides guarantees that the capital punishment shall not be imposed or carried out;
- 9) That there is not a real risk that the person whose transfer is sought will face inhuman or degrading treatment or punishment;

- 10) That there are no grounds for suspicion that a request has been made for the purpose of prosecuting or punishing the person whose transfer is sought on account of his or her race, gender, national or ethnic origin, religion, political opinion or membership of a particular social group;
- 11) That the person whose transfer is sought does not enjoy the protections accorded to refugees in Kosovo;
- 12) That the request for transfer is not made in respect of a political act, where such act shall not be considered to include a criminal offence under Articles 116 through 145 of the Provisional Criminal Code; and
- 13) That transfer is not contrary to international law or international human rights standards for any reason.

**Article 518**

- (1) Proceedings for the transfer to a foreign jurisdiction of a foreign national who is a defendant or a convicted person shall be initiated upon the request of a foreign country.
- (2) The request shall be filed through diplomatic channels.
- (3) The request for transfer shall enclose:
  - 1) The means for identifying the defendant or convicted person (accurate description, photographs, fingerprints and similar);
  - 2) A certificate or other data on the citizenship of the foreign national;
  - 3) The indictment, or judgment, or ruling on detention or another equivalent document, in the original or a certified copy. These papers shall contain: the name and surname of the person whose transfer is requested and other data necessary to establish his or her identity, the description of the act, the legal qualification of the criminal offence and the evidence on which the suspicion rests; and
  - 4) An extract from the criminal law of the foreign country to be applied, or which was applied, against the defendant in regard to the act which prompted the request for transfer; if the act was committed in a third country, an extract from the criminal law of that country.
- (4) If the request and annexes are written in a foreign language, a certified copy of a translation in accordance with Article 15 paragraph 1 of the present Code shall be enclosed.

## **(5) MONTENEGRO**

**LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS** (Official Gazette of Montenegro, No. 04/08 dated 17. 01. 2008)

### **I. GENERAL PROVISIONS**

#### **Article 1**

This Law shall regulate the conditions and procedure for provision of international legal assistance in criminal matters (hereinafter referred to as the international legal assistance).

#### **Article 2**

- (1) International legal assistance shall be provided in accordance with an international agreement.
- (2) If there is no international agreement or if certain issues are not regulated under an international agreement, international legal assistance shall be provided in accordance with this Law, provided that there is reciprocity or that it can be expected that the foreign state would execute the letter rogatory for international legal assistance of the domestic judicial authority.

#### **Article 3**

International legal assistance shall include the extradition of the accused and sentenced persons, transfer and assuming of criminal prosecution, enforcement of foreign criminal verdicts, delivery of documents, written materials and other cases relating to the criminal proceedings in a foreign state, as well as the undertaking of certain procedural actions such as: hearing of the accused, witnesses and experts, crime scene investigation, search of premises and persons and temporary seizure of items.

#### **Article 4**

- (2) Domestic judicial authority shall forward letters rogatory for international legal assistance to foreign judicial authorities and receive the letters rogatory for international legal assistance of the foreign judicial authorities through the ministry responsible for the judiciary (hereinafter referred to as the "Ministry").
- (3) In cases where there is no international agreement or reciprocity, the Ministry shall deliver and receive letters rogatory for international legal assistance through diplomatic channels.
- (4) In cases when this has been provided for under an international agreement or where there is reciprocity, the Ministry shall deliver and receive letters rogatory for international legal assistance through the competent authority of the foreign state as a central communication authority.
- (5) Without prejudice to the above, if provided for under an international agreement, domestic judicial authority may deliver letter rogatory for international legal assistance to a foreign judicial authority directly and receive letter rogatory for international legal assistance from a foreign judicial authority directly, while it shall be obliged to deliver a copy of the letter rogatory to the Ministry.
- (6) In urgent cases, provided that there is reciprocity, letter rogatory for international legal assistance may be delivered and received through the National Central Bureau of the Interpol.
- (7) The courts and the state prosecutors' offices shall be responsible for provision of international legal assistance in accordance with the law.

#### **Article 5**

International criminal assistance may be provided if the offence for which the provision of international legal assistance is requested is a criminal offence both under the domestic law and under the law of the foreign state the judicial authority of which presented the letter rogatory for international legal assistance.

#### **Article 6**

- (1) Unless otherwise has been provided for by an international agreement or this Law, the letter rogatory for international legal assistance of the domestic or of the foreign judicial authority shall be accompanied with the translation of the letter rogatory into the language of the requested state, or one of the official languages of the Council of Europe, if the requested state accepts it. The replies to the letters rogatory of the foreign judicial authorities do not need to be translated.
- (2) Domestic judicial authority shall also proceed upon the letter rogatory for international legal assistance of the foreign judicial authority if the letter rogatory has been presented electronically or by some other means of telecommunication providing delivery receipt, if it may verify its authenticity and if the foreign judicial authority is prepared to deliver the original of the letter rogatory within 15 days at latest.

#### **Article 7**

Unless otherwise has been provided for by an international agreement or this Law, signed and certified letter rogatory for international legal assistance shall contain:

- 1) the name and the seat of the authority making the request;
- 2) the name of the requested authority, and if its precise name is unknown, an indication that the letter rogatory is being sent to the competent judicial authority, and the name of the country;
- 3) legal basis for the provision of international legal assistance;

- 4) the form of the international legal assistance requested and the reason for the letter rogatory;
- 5) legal qualification of the criminal offence committed and the summary of the facts, except if the letter rogatory refers to the service of court writs (applications, documents and the like);
- 6) nationality and other personal details of the person regarding which the international legal assistance is requested and his status in the proceedings;
- 7) in case of service of court writs, their type.

#### **Article 8**

Unless otherwise has been provided for by an international agreement or this Law, the costs of provision of international legal assistance, under the condition of reciprocity, shall be borne by the state to which the letter rogatory for international legal assistance is sent.

#### **Article 9**

The expressions used in this Law shall have the following meaning:

- 1) 'domestic judicial authority' shall mean court and state prosecutor designated by law to provide international legal assistance;
- 2) 'foreign judicial authority' shall mean the state authority competent to provide international legal assistance under the law of the foreign state;
- 3) 'requesting state' shall mean foreign state the competent judicial authority of which sent the letter rogatory for international legal assistance;
- 4) 'requested state' shall mean the foreign state to which the letter rogatory for international legal assistance is sent;
- 5) 'letter rogatory' shall mean a document requesting international legal assistance;
- 6) 'domestic law' shall mean the law of Montenegro.

## **II. EXTRADITION OF ACCUSED AND SENTENCED PERSONS**

#### **Article 10**

The extradition of the accused or sentenced persons shall be requested and enforced in accordance with this Law unless otherwise has been provided for under an international agreement.

#### **Article 11**

- (1) The conditions for the extradition upon the request of the requesting state shall be as follows:
- 1) that the person claimed is not a national of Montenegro;
  - 2) that the offence for which extradition is requested was not committed in the territory of Montenegro, against Montenegro or its national;
  - 3) that the offence motivating the request for extradition is a criminal offence both under the domestic law and under the law of the country in which it was committed;
  - 4) that the criminal prosecution or enforcement of criminal sanction has not been barred by the lapse of time under the domestic law before the person claimed has been detained or examined as an accused;
  - 5) that the person claimed has not been already convicted by a domestic court for the same offence or he has not been acquitted of the same offence by the domestic court in a final and legally binding manner, except if the requirements prescribed by the Criminal Procedure Code for retrial have been met; or criminal proceedings have not been instituted in Montenegro for the same offence committed against Montenegro or a national of Montenegro; or the security for the fulfilment of property law claim of the victim has been provided if the proceedings have been instituted for the offence committed against a national of Montenegro;
  - 6) that the identity of the person claimed has been established;
  - 7) that the requesting state presented facts and sufficient evidence for a grounded suspicion that the person claimed committed the criminal offence or there is a final and legally binding judicial decision;
  - 8) that it does not concern a minor offence, in accordance with the Criminal Code.

#### **Article 12**

- (1) The extradition shall not be allowed for a political criminal offence, an offence connected with a political criminal offence or a military criminal offence within the meaning of the European Convention on Extradition (hereinafter referred to as "political and military criminal offences").
- (2) Prohibition referred to in paragraph 1 above shall not apply to the criminal offences of genocide, crime against humanity, war crimes and terrorism.

#### **Article 13**

- (1) The extradition shall not be granted for the criminal offence punishable under the domestic law and the law of the requesting state by imprisonment for a term of up to six months or a fine.
- (2) If the extradition of the sentenced person is requested to serve the sentence, his extradition shall not be granted if the duration of the imposed imprisonment sentence or the remaining portion thereof which is yet to be served does not exceed four months.

#### **Article 14**

If the law of the requesting state prescribes death penalty for the offence for which the extradition is requested, extradition may be granted only if that state gives assurance that the death-penalty will not be imposed or carried out.

#### **Article 15**

- (1) The procedure for extradition of the accused or sentenced person shall be initiated upon the letter rogatory of the requesting state.
- (2) Letter rogatory for extradition shall be delivered to the Ministry.
- (3) The following shall be enclosed to the letter rogatory:
  - 1) means required to establish the identity of the accused and/or of the sentenced person (accurate description, photographs, fingerprints and the like);
  - 2) certificate or other information on the nationality of the person claimed;
  - 3) indictment, verdict or detention order, or any other document equivalent to indictment, original or notarized copy, which shall contain the forename and surname of the person claimed and other information necessary to establish his identity, description of the offence, legal qualification of the offence and evidence for a grounded suspicion;
  - 4) excerpt from the wording of the criminal law of the requesting country which is to be applied or which has been applied against the accused for the offence for which extradition is requested, and if the offence was committed in the territory of a third country, the excerpt from the wording of the criminal law of that country as well.
- (4) If the information and documents referred to in paragraph 3 above were submitted in a foreign language, they shall be accompanied by a certified translation into the Montenegrin language.

#### **Article 16**

- (1) The Ministry shall deliver letter rogatory for the extradition to the investigating judge of the court within the jurisdiction of which the person claimed resides or within the jurisdiction of which the person claimed happens to be.
- (2) If the domicile or residence of the person claimed is unknown, his domicile or residence shall be established through the state administration authority competent for affairs relating to domicile and residence.
- (3) If the letter rogatory was submitted in accordance with Article 15 above, the investigating judge shall issue the order to detain the person claimed, if there is a danger that he will avoid the procedure of extradition, or if other reasons referred to in the Criminal Procedure Code exist, and/or he shall undertake other measures to ensure his presence, unless it is obvious from the letter rogatory and delivered information and documents that the conditions for extradition have not been met.
- (4) Detention referred to in paragraph 3 above may last until the decision on extradition is enforced at latest but no longer than six months.
- (5) Upon a reasoned request of the requesting state, the Chamber of the competent court may extend the duration of detention referred to in paragraph 3 above in justified cases for additional two months.
- (6) The investigating judge shall, after he establishes the identity of the person claimed, inform him without delay why and based on which evidence his extradition is requested and the investigating judge shall ask him to present his defence.
- (7) The record shall be made of examination and presenting of defence. The investigating judge shall be obliged to inform the person claimed immediately that he may engage a defence attorney, or that a defence attorney *ex officio* may be appointed for him if the defence is mandatory for the criminal offence in question pursuant to the Criminal Procedure Code.

#### **Article 17**

- (1) Detention aimed at extradition may be ordered under conditions referred to in Article 15 of this Law even before the letter rogatory of the requesting state is received, if requested by it, or if there is a grounded suspicion that the person claimed committed the criminal offence for which he can be extradited to the requesting state.
- (2) Investigating judge shall release the person claimed when the reasons for detention terminate or if the letter rogatory has not been submitted within the period of time he determined while taking into consideration all circumstances, and which cannot exceed 40 days from the date of detention. The detention ordered pursuant to paragraph 1 above may be revoked if the letter rogatory has not been submitted within 18 days from the date of detaining the person claimed.
- (3) The Ministry shall inform the requesting state about the deadlines determined by the investigating judge without delay. Without prejudice to the above, if there are justified reasons, the investigating judge may extend the duration of detention for additional 30 days at most, if requested by the requesting state.

#### **Article 18**

- (1) Upon hearing the state prosecutor and the defence attorney, the investigating judge shall undertake other actions, if necessary, to determine if the conditions for extradition and/or surrender of the items on which or by which the criminal offence was committed, if these had been confiscated from the person claimed, are fulfilled.

- (2) After the actions referred to in paragraph 1 above have been completed, the investigating judge shall deliver the case files to the competent Chamber along with his opinion.
- (3) If the criminal proceedings are underway before a domestic court against the person claimed for the same or another criminal offence, the investigating judge shall note that in the case files.

#### **Article 19**

- (1) If the Chamber of the competent court finds that the conditions for extradition prescribed by this Law have not been met, it shall make a decision to reject the letter rogatory for extradition.
- (2) The order referred to in paragraph 1 above shall be submitted by the court *ex officio* directly to the higher court which may confirm, repeal or reverse the decision after it hears the state prosecutor.
- (3) If the person claimed is held in detention, the Chamber of the competent court may decide that he remain in detention until the decision rejecting his extradition becomes final and legally binding.
- (4) Final and legally binding decision rejecting the extradition shall be submitted to the Ministry which shall inform the requesting state thereof.

#### **Article 20**

- (1) If the Chamber of the competent court finds that the conditions for extradition prescribed by this Law are met, it shall confirm this by passing a decision.
- (2) The person claimed shall have right to complain against the decision referred to in paragraph 1 above directly to the court of higher instance within three days after the receipt thereof.

#### **Article 21**

If the court of second instance confirms the decision referred to in Article 20 above, or if the complaint has not been lodged against the decision of the court of first instance, the case shall be delivered to the minister competent for judiciary (hereinafter referred to as the Minister), in order to make decision whether to grant extradition.

#### **Article 22**

- (1) In the event referred to in Article 21 above, the Minister shall pass the decision granting or refusing the extradition.
- (2) When he grants the extradition, the Minister may make a decision to postpone the extradition because criminal proceedings are underway before a domestic court for another criminal offence against the person claimed or because this person is serving the imprisonment sentence in Montenegro.
- (3) The Minister shall not grant the extradition of the person who enjoys the right of asylum in Montenegro or where it can be reasonably assumed that the person claimed shall be subjected to prosecution or punishment because of his race, religion, nationality, belonging to a specific social group or for his political beliefs, or that his status would be made more difficult for one of these reasons.
- (4) The Minister shall refuse the extradition if the person claimed has not been given the possibility to have a defence attorney in the criminal proceedings preceding the extradition.

#### **Article 23**

- (1) In the decision granting the extradition, the Minister shall state that without the consent of Montenegro:
  - 1) the person claimed may not be prosecuted for another criminal offence committed prior to the extradition;
  - 2) the punishment for another criminal offence committed prior to the extradition cannot be enforced against the person claimed;
  - 3) a punishment more severe than the one to which he has been sentenced cannot be enforced against the person claimed;
  - 4) the person claimed may not be extradited to a third state for prosecution for a criminal offence committed prior to the extradition which has been granted.
- (2) Additionally to the conditions referred to in paragraph 1 above, the Minister may also impose other conditions for extradition.

#### **Article 24**

- (3) The requesting state shall be notified of the decision concerning extradition through diplomatic channels.
- (4) The decision granting extradition shall be submitted to the administration authority competent for police affairs which shall escort the person claimed to the border crossing where at an agreed place he will be surrendered to the authorities of the requesting state.

#### **Article 25**

- (1) The requesting state shall take over the person the extradition of whom has been granted within 30 days as of the date of delivery of the decision on extradition.
- (2) The Minister may extend the deadline referred to in paragraph 1 above for additional 15 days upon reasoned request of the requesting state.
- (3) If the person the extradition of whom has been granted has not been taken over upon the expiry of the deadline referred to in paragraphs 1 and 2 above, he shall be immediately released, and the Minister may refuse repeat extradition request for the same criminal offence.



#### **Article 26**

If the extradition of the same person is requested by more than one country, either for the same offence or for different offences, the decision shall be taken having regard to seriousness of the criminal offences, the place of commission, the respective dates of the requests, the nationality of the person claimed, the possibility of subsequent extradition to another state, and other circumstances.

#### **Article 27**

- (1) If the extradition is requested by a foreign state from another foreign state and the person claimed would have to be escorted through the territory of Montenegro, transit may be granted by the Minister upon the letter rogatory by the requesting state provided that the person concerned is not a national of Montenegro and that the extradition is not enforced for political or military criminal offence.
- (2) Letter rogatory for transit of the person through the territory of Montenegro shall contain the information and documents referred to in Article 15 paragraph 3 of this Law.
- (3) In the case of transit of the person through the territory of Montenegro by air transit, if no landing is expected, it shall not be necessary to obtain permit referred to in paragraph 1 above.
- (4) The requesting state shall notify the Ministry of transit referred to in paragraph 3 above. The notification shall contain information such as: the name of the person escorted through the territory of Montenegro, the state to which the person is extradited, the criminal offence for which the person is extradited, and the time of air transit.

#### **Article 28**

- (1) At the request of the requesting state, the competent court shall seize and surrender, in accordance with the domestic law, items which may serve as evidence materials or that resulted from the commission of criminal offence.
- (2) The items referred to in paragraph 1 above shall be surrendered even in case when an already approved extradition may not be enforced due to the death or escape of the person claimed.
- (3) If the items referred to in paragraph 1 above are subject to seizure or confiscation in the territory of Montenegro, they may be temporarily retained or surrendered provided that they are returned in connection with the ongoing criminal proceedings.
- (4) The items referred to in paragraph 1 above, to which Montenegro and third persons have rights, shall be returned to Montenegro as soon as possible after the hearing is completed. The costs of returning of items shall be borne by the requesting state.

#### **Article 29**

- (6) The person for the extradition of whom the foreign state submitted the letter rogatory if the conditions for extradition prescribed by this Law have been met may be extradited within a summary procedure if the person claimed consented.
- (7) The consent referred to in paragraph 1 above shall be entered for the record before a competent court in accordance with the Criminal Procedure Code, in a way ensuring that the consent has been given voluntarily and that the person claimed has been aware of all consequences of such consent when the consent was given. The consent once given cannot be revoked.
- (8) The decision on extradition in a summary procedure shall be passed by a competent court.
- (9) The court shall notify without delay the Ministry about the decision referred to in paragraph 3 of this Article, and the Ministry shall inform the requesting state.
- (10) The extradition within a summary procedure shall have the same force and effect as the extradition within an ordinary procedure.

#### **Article 30**

The costs of extradition incurred outside the territory of Montenegro shall be incurred by the requesting state.

#### **Article 31**

- (1) If criminal proceedings are underway in Montenegro against a person located in a foreign state or if the person located in a foreign state has been sentenced by a competent Montenegrin court, the Minister may submit the letter rogatory for extradition.
- (2) The letter rogatory shall be submitted to the requested state through diplomatic channels and it shall be accompanied by documents and information referred to in Article 15 of this Law.

#### **Article 32**

- (1) If there is danger that the person claimed will flee or hide, the Minister may request to order to detain that person temporarily or to undertake other measures required to prevent his escape even before the actions are taken in accordance with Article 31 of this Law.
- (2) The letter rogatory for temporary detention shall contain specifically the information on the identity of the person claimed, the name of the criminal offence for which the extradition is requested, indictment, verdict or detention order, date, place and name of the authority ordering detention, and/or information about the validity of verdict, as well as the statement that the extradition shall be requested through regular channels.

#### **Article 33**

- (1) If the person claimed is extradited, he may be criminally prosecuted and/or the punishment may be enforced against him only for the criminal offence for which the extradition has been granted.
- (2) If the person referred to in paragraph 1 above has been convicted finally and in a legally binding manner by the competent Montenegrin court for other criminal offences committed prior to extradition with regard to which extradition is not allowed, the provisions of the Criminal Procedure Code regulating the reversal of verdict without retrial shall apply *mutatis mutandis*.
- (3) If the extradition has been granted under certain conditions with respect to the type or duration of sanction which may be imposed and/or enforced and if it has been accepted under such conditions, the court shall be bound by such conditions when pronouncing a sentence; while if the enforcement of an already imposed sentence is the subject of the extradition, the court adjudicating in the highest instance shall reverse the verdict and impose the punishment in accordance with the conditions of extradition.
- (4) If the person extradited had been held in detention in a foreign country for the criminal offence for which he has been extradited, the time spent in detention shall be accounted for in the imprisonment sentence.

### **III. TRANSFER AND ASSUMING OF CRIMINAL PROSECUTION**

#### **Article 34**

- (6) If a foreigner whose place of residence is in a foreign state committed a criminal offence in the territory of Montenegro, that state can surrender the criminal files for the purpose of criminal prosecution and trial if the foreign state does not object to it, without prejudice to the conditions referred to in Article 11 of this Law.
- (7) Before passing the decision to conduct investigation, the decision to transfer criminal prosecution shall be taken by the competent state prosecutor; and if the decision was passed prior to the commencement of the main hearing, the decision to transfer criminal prosecution shall be taken by the Chamber of the competent court composed of three judges.
- (8) The decision to transfer criminal prosecution may be taken for the criminal offences punishable by imprisonment for a term of up to ten years and for the criminal offences of jeopardising public traffic.
- (9) If the victim is a national of Montenegro, the transfer of criminal prosecution shall not be allowed if the victim opposes to it, unless a security for the settlement of his property law claim has been provided.
- (10) If the accused is held in detention, it shall be requested from the requested state through the shortest possible means to inform the competent Montenegrin authority within fifteen days at latest whether it shall assume the prosecution.

#### **Article 35**

- (1) The competent court or the state prosecutor shall deliver the letter rogatory for the transfer of the criminal prosecution accompanied with the decision on the transfer of criminal prosecution and the case files to the Ministry.
- (2) The Ministry shall deliver the letter rogatory for the transfer of the criminal prosecution to the competent authority of the requested state, in accordance with Article 4 of this Law.

#### **Article 36**

- (4) The request of the requesting state for Montenegro to assume the criminal prosecution of a national of Montenegro or a person whose residence is in Montenegro for the criminal offence committed in the requesting state, shall be delivered together with the files to the competent state prosecutor within the jurisdiction of whom that person resides.
- (5) If the property law claim has been lodged with the competent authority of the requesting state, action shall be undertaken as if it were presented to the competent court.
- (6) The requesting state shall be informed of the refusal to assume criminal prosecution as well as of the final and legally binding decision passed within the criminal proceedings, in accordance with Article 4 of this Law.

#### **Article 37**

- (1) If the criminal prosecution has been assumed at the letter of request referred to in Article 36 of this Law, domestic law shall apply.
- (2) The law of the foreign state shall apply in case when it is more favourable for the accused.

### **IV. ENFORCEMENT OF FOREIGN CRIMINAL VERDICT**

#### **Article 38**

- (1) Competent Montenegrin court shall enforce final and legally binding criminal verdict of a foreign court if this has been prescribed under an international agreement or if there is reciprocity and if it imposes the criminal sanction in accordance with the domestic law.
- (2) In the case referred to in paragraph 1 above, the competent court shall pass the decision within a Chamber composed of three judges without presence of the parties.

- (3) Territorial jurisdiction of the court shall be defined according to the last place of residence of the sentenced person in Montenegro and if the sentenced person has never reported his place of residence in Montenegro – according to the place of birth. If the sentenced person neither has had his place of residence nor was born in Montenegro, the Supreme Court of Montenegro shall identify one of the courts having subject-matter jurisdiction before which the proceedings shall be conducted.
- (4) In the operative part of the verdict referred to in paragraph 2 of this Article, the court shall insert full wording of the operative part and the name of the court from the verdict of the foreign court and it shall pronounce the sentence. In the particulars of judgment, the court shall state reasons it took into account in the pronouncement of the sanction and refer to the reasons of the foreign court the verdict of which is enforced.
- (5) State prosecutor and the sentenced person or his defence attorney may lodge a complaint against the verdict.

#### **Article 39**

- (1) If the foreign court pronounced criminal sanction which is not prescribed by the domestic law, the competent Montenegrin court shall pronounce a criminal sanction which is most similar to the criminal sanction imposed by a foreign court by type and severity.
- (2) In the event referred to in paragraph 1 above, the criminal sanction may not be more severe than the criminal sanction pronounced by a foreign court.

#### **Article 40**

The provisions of the domestic law regulating pardon, amnesty and conditional release shall also apply to the persons convicted by foreign criminal verdicts enforced in Montenegro.

#### **Article 41**

- (1) A criminal verdict of a Montenegrin court may be enforced in a foreign state if this has been prescribed under an international agreement or if there is reciprocity.
- (2) If the foreign national convicted in Montenegro or if a competent authority authorized by an international agreement submits a request to the competent Montenegrin court for the sentenced person to serve the sentence in his country, the court shall proceed pursuant to the international agreement.

### **V. OTHER FORMS OF INTERNATIONAL LEGAL ASSISTANCE**

#### **Article 42**

Other forms of international legal assistance shall be: submitting documents, written materials and other cases related to the criminal proceedings in the requesting country; mutual exchange of information, as well as undertaking of individual procedural actions; hearing the accused, witness and expert, including hearing through video and telephone conference, crime scene investigation, search of premises and persons, temporary seizure of items, secret surveillance measures, DNA analysis, temporary surrender of a person deprived of liberty in order to give testimony, delivering information from penal records and other procedural actions.

#### **Article 43**

- (1) The Ministry shall deliver and receive letters rogatory for the forms of international legal assistance referred to in Article 42 of this Law in accordance with Article 4 of this Law.
- (2) The permissibility and the method of enforcement of the action which is the subject matter of the letter rogatory of the foreign judicial authority shall be decided by the court in accordance with domestic law and international agreement.

#### **Article 44**

- (1) At the letter of request of the foreign judicial authority, domestic judicial authority may approve the presence of a foreign official person and person having legal interest in the enforcement of the action requested by the letter rogatory.
- (2) In case the presence at the letter of request referred to in paragraph 1 above is approved, domestic judicial authority shall send notice to the foreign judicial authority of the place and time of enforcement of the action requested by the letter rogatory.

#### **Article 45**

Procedural action undertaken by the foreign judicial authority in accordance with its law shall be deemed equal to the relevant procedural action undertaken by a domestic judicial authority within the criminal proceedings, unless this is contrary to the principles of the domestic judicial system and generally accepted principles of the international law.

#### **Article 46**

International legal assistance shall not be provided if the letter rogatory concerns military criminal offence.

#### **Article 47**

International legal assistance referred to in Article 42 of this Law may be refused:

- 1) if the letter rogatory of the requesting state concerns political criminal offences;
- 2) if the execution of the letter rogatory of the requesting state is likely to prejudice the sovereignty, constitutional order, security or other essential interests of Montenegro.

#### **Article 48**

- (1) Domestic judicial authority may delay provision of international legal assistance referred to in Article 42 of this Law if this is necessary for criminal prosecution or conduct of criminal proceedings which is pending before domestic judicial authorities, and which is related to the letter rogatory delivered.
- (2) If the domestic judicial authority delays the provision of international legal assistance, in accordance with paragraph 1 above, it shall notify the requesting state thereof and state reasons for delay.

#### **Article 49**

- (1) Person deprived of liberty in Montenegro may be temporarily transferred to the requesting state at the letter of request of its competent judicial authority as a witness for the purpose of hearing, confrontation or crime scene investigation, for the proceedings initiated in that state, provided that:
  - 1) the person gave a statement for the record of the competent court that he consents to temporary transfer;
  - 2) the period of temporary transfer will not prolong his detention and jeopardize the criminal proceedings underway against him in Montenegro;
  - 3) a person shall not be punished or another sanction imposed on him during temporary transfer;
  - 4) it has been ensured that the transferred person shall be sent back to Montenegro immediately after the procedural action has been completed.
- (2) The requesting state shall be obliged to send back the person referred in paragraph 1 above to Montenegro, without delay, immediately after the procedural action has been completed, within 60 days at latest.
- (3) The decision on transfer shall be passed by the competent court within a Chamber composed of three judges and it shall be enforced in a manner prescribed by Article 24 paragraph 2 of this Law.
- (4) The person the transfer of whom is requested shall have the right to lodge a complaint against the decision referred to in paragraph 3 above to the competent court within three days as of the receipt of decision.

#### **Article 50**

As regards the criminal offences of making and putting into circulation counterfeit money, money-laundering, unauthorized production, processing and sale of narcotic drugs and poisons, trafficking in human beings, as well as other criminal offences with respect to which the centralization of data is prescribed under international agreements, the authority before which the criminal proceedings are conducted shall be obliged to deliver to the National Central Bureau of the Interpol, without delay, data on criminal offences and the perpetrator, while the court of first instance shall be further obliged to submit a final and legally binding verdict.

#### **Article 51**

- (1) The Ministry shall, at the request of domestic judicial authorities, obtain from the competent foreign judicial authorities texts of legislation which are applicable or were applicable in other countries, and, if necessary, notifications regarding certain legal issue.
- (2) The Ministry shall, at the request of foreign judicial authorities, deliver texts of domestic legislation or notifications on certain legal issue.

#### **Article 52**

- (1) International legal assistance referred to in Article 42 of this Law shall also be provided to the European Court of Human Rights and European Court of Justice, in accordance with this Law.
- (2) Provision of international legal assistance to the International Criminal Court shall be prescribed under a separate law.

#### **Article 53**

The costs incurred in relation to expert examination, and the costs of temporary transfer of the person deprived of liberty for the purpose of hearing in the requesting state shall be borne by the requesting state.

### **VI. TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 54**

Unless otherwise has been provided for under this Law, the provisions of the Criminal Procedure Code shall apply *mutatis mutandis* to the provision of international legal assistance.

**Article 55**

The procedures for provision of international legal assistance underway on the date of entry into force of this Law shall be finalized in accordance with the provisions of Chapter XXX and XXXI of the Criminal Procedure Code ('Official Gazette of SFRY', Nos. 4/77, 14/85, 74/87, 57/89 and 3/90, and 'Official Gazette of FRY', Nos. 27/92 and 24/94).

**Article 56**

The provisions of Chapter XXX and XXXI of the Criminal Procedure Code ('Official Gazette of SFRY', Nos. 4/77, 14/85, 74/87, 57/89 and 3/90, and 'Official Gazette of FRY', Nos. 27/92 and 24/94) shall cease to be valid by entry into force of this Law.

**Article 57**

This Law shall enter into force eight days after the date of its publication in the Official Gazette of Montenegro.

## **(6) SERBIA**

### **ABSTRACT FROM THE LAW ON CRIMINAL PROCEEDINGS**

#### **Chapter XXXIV**

#### **PROCEDURE FOR MUTUAL ASSISTANCE AND ENFORCEMENT OF INTERNATIONAL TREATIES IN CRIMINAL MATTERS**

##### **Article 507**

- (1) International mutual assistance is given according to stipulations of international treaties.
- (2) If there is no international treaty or certain matters are not regulated by an international treaty, international mutual assistance is performed according to the provisions of this act.

##### **Article 508**

International mutual assistance shall particularly include execution of certain procedural actions, such as interrogation of a defendant, witnesses and experts, investigation, search of premises and persons, seizure of subjects, as well as handing over of files, documents and other subjects that are connected to criminal proceedings in the requesting country.

##### **Article 509**

- (1) Letters rogatory of the domestic courts and State prosecutor for mutual assistance in criminal matters are submitted to foreign authorities through an authority determined by a special regulation. The same channels shall be used for transmitting letters rogatory of the foreign authorities to the domestic courts.
- (2) In urgent cases, if there is reciprocity, letters rogatory may be submitted through the Federal Ministry of the interior.
- (3) By a special act, it shall be determined which courts will be jurisdiction to execute requests for mutual assistance in criminal matters, or a certain court may be designated to deal with these matters for all courts from a particular territory.

##### **Article 510**

- (1) The authority determined by a special regulation will submit letters rogatory of foreign authority to the competent court.
- (2) In cases referred to in Article 505 paragraph 2 of this code, the Federal Ministry of the interior sends the letter rogatory to the court through the Federal Ministry of Justice.
- (3) The court will decide according to domestic law on the admissibility and the manner of execution of an action subject to the letter rogatory.
- (4) When the letter rogatory regards a criminal offence for which extradition is not allowed according to domestic law, the court shall request from the Federal Ministry of Justice an opinion whether to proceed upon the letter rogatory.

##### **Article 511**

- (1) Domestic courts will not proceed upon a letter rogatory from a foreign authority by which the enforcement of a verdict rendered by a foreign court is requested.
- (2) Regardless of the provision of paragraph 1 of this article, in exceptional cases, a domestic court will enforce a foreign verdict regarding a sanction pronounced by a foreign court if this is provided by an international treaty or on the basis of reciprocity and provided that the sanction is also imposed by the domestic court in accordance with the criminal legislation of the Republic of Serbia.
- (3) A court having jurisdiction shall render a judgment at the session of the panel referred to in article 24 paragraph 6 of this code. The State prosecutor and defence counsel shall be notified of the panel session.
- (4) A territorial jurisdiction of the court shall be determined according to the last domicile of the convicted person in the Republic of Serbia, and if the convicted person had no domicile in the Republic of Serbia – according to his place of birth. If the convicted person had no domicile nor place of birth in the Republic of Serbia, the Supreme court shall designate one of the courts having subject matter jurisdiction before which the proceedings will be conducted.
- (5) A court having subject matter jurisdiction is the court determined by the law.
- (6) In the ordering part of the judgment referred to in paragraph 3 of this Article, the court shall include the complete ordering part and the indication of the court referred to in the foreign verdict and shall impose a sanction. The statement of reasons for the judgment shall contain the reasons taking into account in fixing the sanction.
- (7) The State prosecutor, the convicted person and his defence counsel and persons referred to in article 388 paragraph 2 of this act may take an appeal from the judgment.
- (8) If a foreign citizen sentenced by a domestic court or a person authorized by a treaty, file a petition to the court at first instance for serving the sentence in his country, the court of at first instance shall proceed according to the international treaty or on the basis of reciprocity.

#### **Article 512**

In regard with criminal offences related to counterfeiting of money, money laundering, illicit manufacturing and trafficking in narcotic drugs and toxins, trafficking in persons as well as other criminal offences for which a centralization of data is provided for in international treaties, an authority before which criminal proceedings are conducted is bound, without delay, to deliver data concerning the criminal offence and the perpetrator to the Federal Ministry of the interior, and court at first instance shall deliver a final judgment.

#### **Article 513**

- (1) If a foreigner, who has residence in a foreign country, has committed a criminal offence on the territory of the Republic of Serbia, regardless of the conditions specified in article 540 of this act, the criminal files may be transferred to that country for the purpose of prosecution and trial, provided that the foreign country does not object thereon.
- (2) Before a ruling on conducting investigation is rendered, the State prosecutor shall decide on the transfer. In the course of investigation, this decision shall be rendered by an investigating judge upon a motion of the State prosecutor, and until the beginning of the trial by the panel (article 24 paragraph 6).
- (3) A transfer may be allowed for criminal offences punishable by imprisonment up to ten years, as well as for criminal offences against safety in traffic.
- (4) If the injured person is a Serbian citizen, the transfer shall not be allowed if he objects to that, save if a security to assert his claim of indemnification is deposited.
- (5) If a defendant is in detention, the foreign state shall be requested to state in the most expedient manner and within 15 days whether it shall assume the prosecution.

#### **Article 514**

- (1) The request of a foreign state for transferring proceedings to the Republic of Serbia instituted against a Serbian citizen or a person who has residence in the Republic of Serbia for a criminal offence committed abroad, shall be transmitted along with the files to the state prosecutor having jurisdiction within whose territory that person has his residence.
- (2) If a claim for indemnification is submitted to a competent authority of a foreign state, it shall be proceeded as if that claim was submitted to the authority having jurisdiction.
- (3) The requesting country shall be notified of the rejection of the request for the transfer of proceedings as well as the final decision rendered in criminal proceedings.

#### **Article 515**

The Federal Minister of Justice shall regulate the contents of a request and other issues related to international mutual assistance in criminal matters not specified in this Act in a more detailed way.

### **Chapter XXXV**

#### **PROCEDURE FOR DELIVERY OF CHARGED AND SENTENCED PERSONS**

#### **Article 516**

- (1) Extradition of defendants or sentenced persons shall be conducted according to the provisions of international treaties.
- (2) If there is no international treaty or the international treaty does not regulate certain issues, extradition of defendants or sentenced persons shall be conducted in accordance with the provisions of this Act.

#### **Article 517**

- (1) Preconditions for extradition shall be the following:
  - 1.) If the person subject to extradition is not a Serbian national;
  - 2.) If an offense for which extradition is requested is not committed in the territory of the Republic of Serbia, against it or its citizen;
  - 3.) If an offense for which extradition is requested is a criminal offence according to both domestic law and law of a state where it is committed;
  - 4.) If according to a domestic law the period of limitation for the institution of prosecution or for the execution of punishment has not expired, or if amnesty is not granted;
  - 5.) If a foreigner whose extradition is requested has not already been sentenced by a domestic court for the same offense, or has not been acquitted for the same offense by a final judgment rendered by the domestic court, except when the conditions specified in this Act for the reopening of the criminal proceedings are met, or if, for the same offense committed against the Republic of Serbia, criminal proceedings have not been instituted in the Republic of Serbia, but if proceedings have been instituted for an offense committed against a Serbian citizen - that a security to assert a claim for indemnification of the injured person is deposited.
  - 6.) If an identity of the person whose extradition is requested is established;
  - 7.) If there is enough evidence for a reasonable suspicion that a foreigner, whose extradition is requested, has committed a certain offense or if a final judgment exists;

- (2) In accordance with the conditions referred to in paragraph 1 subparagraphs 3, 4 and 6 of this Article and provided that a foreigner or a Serbian citizen has not been already sentenced for the same offense by a domestic court, his extradition may be granted to the international court which jurisdiction the Republic of Serbia has accepted by means of a ratified treaty.

#### Article 518

- (1) Proceedings for extradition of defendants or sentenced persons shall be instituted upon a request of a foreign state.
- (2) The request shall be submitted to the authority determined by a special regulation.
- (3) Along with the request, the following supplementary documents must be attached:
  - a) Means to establish the identity of the defendant or the sentenced person (an accurate description, photographs, finger prints etc);
  - b) Certificate or other data related to the nationality of a foreigner;
  - c) The charge or a judgment or a decision on detention or some other similar document equal to this decision, either as original or a certified copy, which shall state the name and surname of the person whose extradition is requested as well as other data necessary to establish his identity, a description of the offense, its statutory title and evidence supporting a reasonable suspicion;
  - d) Reference and a copy of the provisions of criminal law of the foreign state to be applied or has been applied against the defendant in regard with the offense for which extradition is requested, and if the offense has been committed in the territory of a third state, a copy of the relevant provisions of the criminal law of that state, as well.
- (4) If the mentioned supplementary documents are created in a foreign language, a certified translation into Serbian language shall be attached.

#### Article 519

- (1) An authority determined by a special regulation shall transmit the request for extradition of the foreigner to an investigating judge of a court within whose territory the foreigner resides or is located.
- (2) If the domicile or residence of the foreigner whose extradition is requested is unknown, the previous domicile or residence shall be discovered through a police authority.
- (3) If the request is consistent with the conditions referred to in Article 518 of this Act, the investigating judge shall order detention against the foreigner provided that grounds referred to in Article 174 of this Act exist, or shall undertake other measures for securing his appearance, except when it is obvious from the request itself that there are no grounds for extradition. Detention may last at the longest until the enforcement of the decision on extradition, but no longer than one year from the day of detention. The provisions of Articles 175 and 178 paragraph 2 of this Act shall apply *mutatis mutandis* in regard with this detention.
- (4) After he establishes the identity of the foreigner, the investigating judge shall without delay state to him reasons why his extradition is requested and evidence supporting the request and shall call him to present his defence.
- (5) A record shall be drawn up of interrogation and defence. The investigating judge shall instruct the foreigner that he may retain a defence counsel or he shall appoint one to him by virtue of the office in the case a defence is mandatory according to this Act.

#### Article 520

- (1) In urgent cases, when there is a danger that a foreigner will flee or hide, upon a request of a foreign authority irrespective of the manner of its transmission, the police authority may provisionally arrest the foreigner for the purpose of bringing him before the investigating judge of the court having jurisdiction. The request shall contain data for identification of the foreigner, nature and indication of the criminal offense, the case reference, date, place and indication of the foreign authority which ordered detention and a statement that extradition shall be requested in a usual manner.
- (2) When provisional arrest is ordered pursuant to paragraph 1 of this Article and when the foreigner is brought before the investigating judge, the investigating judge shall, after interrogation of the foreigner, order detention against him and notify the body determined by a special regulation thereof.
- (3) The investigating judge shall release the foreigner when grounds for detention cease to exist, or if the request for extradition is not submitted within a term that investigating judge has determined by taking into account distance of the foreign state which requested extradition, and which may not be longer than two months from the day the foreigner was detained. The foreign state shall be notified of this term. Upon a request of the foreign state, the panel of the court having jurisdiction may prolong this term for justifiable reasons for an additional one month at the longest.
- (4) When the request is submitted within the specified term, the investigating judge shall proceed in accordance with Article 519 paragraphs 3 and 4 of this Act.

#### Article 521

- (1) After having heard the State Attorney and the defence counsel, if necessary, the investigating judge shall undertake other inquiries as well, in order to establish whether the preconditions for granting extradition of a foreigner exist, or for handing over objects used in the perpetration of a criminal offense, provided that these objects are confiscated from the foreigner.



- (2) After inquiries are completed, the investigating judge shall deliver the files, along with his opinion, to the panel.
- (3) If against a foreigner whose extradition is requested, criminal proceedings are pending before a domestic court, or if this person is sentenced or he is serving the sentence for the same or other criminal offense, the investigating judge shall indicate that in the files.

#### **Article 522**

- (1) If a panel of the court having jurisdiction establishes that the preconditions for granting extradition are not met, it shall render a ruling rejecting the request for extradition. This court shall by virtue of the office deliver this ruling to the court designated by law of a member republic, which shall, after having heard the State Attorney, affirm, vacate or revise the ruling.
- (2) If a foreigner is detained, the panel may decide he should be kept arrested until the ruling rejecting extradition becomes final.
- (3) The final ruling rejecting extradition shall be delivered to the body determined by a special regulation, which shall notify the foreign state thereof.

#### **Article 523**

If the panel of the court having jurisdiction establishes that the preconditions for granting extradition of a foreigner are met (Article 517) it shall render a ruling thereon. The foreigner may take an appeal from that ruling with a court designated by law.

#### **Article 524**

If in the course of appellate proceedings, the court establishes that the preconditions for extradition of the foreigner are met, or if against such a ruling rendered by the court at first instance an appeal is not filed, the case shall be referred to the authority determined by a special regulation, who shall decide on extradition.

#### **Article 525**

- (1) The authority determined by a special regulation shall render a ruling granting or rejecting extradition. The authority may render a ruling to postpone extradition due to pending of criminal proceedings before a domestic court for other criminal offense committed by the foreigner whose extradition is requested, or because he is serving a sentence in the Republic of Serbia.
- (2) The authority determined by a special regulation shall not grant extradition of the foreigner who is entailed to asylum in the Republic of Serbia, or in regard with a political or military offense, or if a life or liberty of the foreigner is in danger due to his race, religion, ethnic origin, social status or political convictions, or if serious reasons exist to believe that the foreigner shall be exposed to inhuman treatment or torture in the state which requested extradition, or if it was not made possible for the foreigner to retain a defence counsel in the proceedings prior to extradition, or the proceeding was not conducted in compliance with legal standards set in the ratified international treaties. The authority may reject extradition related to criminal offenses punishable according to domestic law by imprisonment for a term of less than three years, or if the foreign court has imposed a punishment of imprisonment for a term of less than one year.

#### **Article 526**

- (1) The authority shall state in the ruling granting extradition the following:
  - a) A foreigner cannot be prosecuted for other criminal offense, committed prior to extradition;
  - b) A punishment, imposed for other criminal offense committed prior to extradition, cannot be executed against him;
  - c) A more severe punishment than one he is sentenced with or a death penalty cannot be executed against him;
  - d) A foreigner must not be extradited to a third state for the purpose of prosecution for a criminal offense committed prior to extradition.
- (2) In addition to the mentioned conditions, authority determined by a special regulation may also set other conditions for extradition, in accordance with law and international treaty.

#### **Article 527**

- (1) A foreign state shall be notified of the ruling deciding on extradition through diplomatic channels.
- (2) A ruling granting extradition shall be delivered to the Federal Ministry of Internal Affairs which shall order a foreigner be brought to a state border, and at the determined place, he shall be surrounded to authorities of the foreign state which requested extradition.

#### **Article 528**

- (1) If extradition of the same person is requested by several foreign states for the same criminal offense, a priority shall have the request of the state whose national is that person, and if that state does not request extradition – the request of the state on whose territory the criminal offense has been committed, and if it has been committed on territory of several states or if it is unknown where it has been committed – the request of the state which is first submitted.

- (2) If extradition of the same person is requested by several foreign states for different criminal offenses, a priority shall have the request of the state whose national is that person, and if that state does not request extradition – the request of the state on whose territory the most severe criminal offense has been committed, and if criminal offenses are of the same seriousness – the request of the state which is first submitted.

**Article 529**

- (1) If criminal proceedings are pending in the Republic of Serbia against a person who is abroad or if the person who is abroad is sentenced by a domestic court, the authority determined by a special regulation may submit a request for extradition.
- (2) The request along with supplementary documents and data referred to in Article 518 of this Act shall be submitted to a foreign state through diplomatic channels.

**Article 530**

- (1) If there is a danger that the person whose extradition is requested shall flee or hide, the authority determined by a special regulation may, before it is proceeded pursuant to Article 529 of this Act, request measures related to his arrest be undertaken.
- (2) The request for the provisional arrest shall particularly state data related to identity of the person sought, nature and statutory title of the criminal offense, the case reference, date, place and indication of the authority which ordered the provisional arrest or data related to the final judgment as well as a statement that extradition shall be requested in a usual manner.

**Article 531**

- (1) If the person sought is extradited, he may be prosecuted or a punishment may be executed against him only for a criminal offense for which extradition is granted.
- (2) If such a person is convicted by a final judgment of a domestic court for criminal offenses committed prior to extradition and for which extradition is not granted the provisions of Article 424 of this Act shall apply *mutatis mutandis*.
- (3) If extradition is conditionally granted in relation to a type and a range of punishment to be imposed or executed, and provided that extradition under such conditions is accepted, the court shall be bound by these conditions when imposing a punishment, and if enforcement of already imposed punishment is concerned, the court which tried the case at last instance shall revise the judgment and fix the punishment according to the conditions of extradition.
- (4) If the extradited person was provisionally arrested in a foreign state for the criminal offense due to which he was extradited, the time spent in provisional arrest shall be included in the punishment.

**Article 532**

- (1) If a foreign state requests extradition from another foreign state and if the person sought should be transferred through the territory of the Republic of Serbia, transit may be granted by the authority determined by a special regulation upon a request of the state having an interest, provided that transit does not concern a Serbian national and that extradition is not carried out for a political or military offense.
- (2) The request for transit of persons through the territory of the Republic of Serbia must contain all data referred to in Article 518 of this Act.
- (3) The costs of transit through the territory of the Republic of Serbia shall be paid from federal budget costs provided that reciprocity exists.

## **(7) “THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”**

### **CONSTITUTION**

#### **Article 4**

Citizens of the [former Yugoslav] Republic of Macedonia have citizenship of the [former Yugoslav] Republic of Macedonia.

A subject of the [former Yugoslav] Republic of Macedonia may neither be deprived of citizenship, nor expelled or extradited to another state. Citizenship of the [former Yugoslav] Republic of Macedonia is regulated by law.

### **CRIMINAL PROCEDURE CODE**

#### Chapter XVIII

#### INVESTIGATING ACTS

##### 1. Search of residence and person

#### **Article 214**

- (1) Search of residence and other premises of the accused or of other persons may be initiated if it is likely that with the search the accused will be caught or traces of the crime or objects significant for the criminal procedure will be found.
- (2) Search of persons may be undertaken when it is likely that traces or objects important for the criminal procedure will be found.

#### **Article 215**

- (1) The search is ordered by the court with a written elaborated order which explicitly contains the place and the person to be searched as well as the objects which are searched for or confiscated from the person.
- (2) The search warrant is shown before the search to the person whose home or himself will be searched. Before the search, the person to whom the search warrant refers will be asked voluntarily to turn in the person i.e. give away objects which are searched for.
- (3) If an armed resistance is presumed or it is suspected that a severe crime is conducted by a group or organization or if the search is to be performed in public premises, the search may be performed suddenly or it could be performed without previous showing of the search warrant or without a previous request for turning over of the person or giving away the objects.
- (4) The search is performed during the day. It may continue at night if it has started at daylight but has not been completed. With exception, the search may be conducted at night if there is a danger of cancelling.

#### **Article 216**

- (1) The householder or the holder of other premises will be summoned to be present at the search, and if he is absent his authorized representative will be summoned or some of his adult members of the family or neighbours.
- (2) Locked premises, furniture and other objects will be opened forcefully only if their holder i.e. owner is absent or does not agree to open them voluntarily. While opening, unnecessary damage will be avoided.
- (3) During the search of premises or persons two adult citizens will be present as witnesses. The search of a female is performed only by a female officer, and the witnesses are also female. Before the beginning of the search the witnesses will be warned to pay attention to the performance of the search and they will be also reminded of their right, before signing the minutes for the search to write in their objections if they consider that the contents of the minutes is incorrect.
- (4) The search may be performed without the presence of witnesses if their presence is not possible immediately to be provided and there is a danger of cancelling. The reasons for a search without the presence of witnesses must be written in the minutes.
- (5) When the search is conducted in the premises of state agencies, institutions which perform authorizations or legal persons, their chiefs will be called to be present during the search.
- (6) Searches and inspections of army buildings will be performed on the approval of the competent army non-commissioned officer.
- (7) The search of premises and persons is to be performed carefully without disturbing the order of the residence.
- (8) During the performance of the search only those objects and identity cards i.e. documents will be temporarily confiscated which are in connection with the aim of the search in that particular case.
- (9) If during the search of premises and persons objects are found which have no connection with the crime for which the search is intended but which point to another crime which is to be prosecuted ex officio, the object will be confiscated and a receipt for the confiscation will be immediately issued. The public prosecutor will be immediately informed in order a criminal procedure to be initiated. These objects will be immediately returned if the public prosecutor finds that there are no grounds for initiation of a criminal procedure and there is no other lawful ground according to which those objects should be confiscated.

#### **Article 217**

- (1) For each search of residences or persons a minutes will be constructed. The minutes will be signed by the official conducting the search, the person at whose place or on whom the search is conducted and the persons whose presence is compulsory.
- (2) The objects and documents which have been confiscated will be included and notified correctly in the minutes.
- (3) The person will be issued a receipt for the confiscated objects or documents.

#### **Article 218**

- (1) The authorized officials of the Ministry of Internal Affairs may, without a search warrant, enter a residence or other premises if the person who, according to the court order is to be detained or forcefully apprehended, is in those premises.
- (2) The authorized officials of the police may without a search warrant and without the presence of witnesses perform a search of a person while conducting the court order for apprehension or during the arrest it is suspected that the person possesses guns or tools for attack or if it is suspected that the person will throw away, hide or destroy the objects which are to be confiscated from him as evidence in the criminal procedure.

### **2. Temporary confiscation of objects**

#### **Article 219**

- (1) Objects which according to the Criminal Code are to be confiscated or may serve as evidence in the criminal procedure will be confiscated temporarily and entrusted to the court for guarding or otherwise protect them.
- (2) The person who holds such objects is obliged to give them to the court on its request. The person who refuses to give away the objects may be punished with a fine defined in Article 75, paragraph 1 of this Code.
- (3) For an appeal against the decision according to which a fine or detention is pronounced, the Chamber decides (Article 22, paragraph 6). The appeal against the decision for detention does not keep it from execution of the decision.
- (4) The authorized officials of the Ministry of Internal Affairs may confiscate the objects listed in paragraph 1 of this Article when they act according to Articles 144 and 157 of this Code or when they execute a court order.
- (5) At the confiscation of the objects the place where they were found will be notified and they will be described and if necessary the certifying of their identity will be secured. A receipt will be issued about the confiscated objects.
- (6) The confiscated narcotic drugs, psychotropic substances, precursors and other materials the circulation of which is forbidden or restricted, which are not kept as samples for expertise, with a decision of the competent court, may be destroyed even before the verdict becomes valid.

#### **Article 220**

- (1) The investigating judge or the chamber may issue a decision for temporary securing of the property or the assets related to the criminal offence. Property or assets subjected to securing shall be under court supervision. Temporary securing of property or assets shall also mean temporary freezing, seizure, retention of funds, bank accounts and financial transactions or proceeds of crime.
- (2) In addition to the items referred to in Article 219 of this Law, the court may issue a decision to freeze the assets, bank accounts and funds suspected to be proceeds of crime.
- (3) The measures for temporary securing of items, property or assets may last until the procedure is finished.
- (4) Temporary freezing of accounts may last until the procedure is finished; its justification shall be reviewed ex officio every second month.
- (5) Real estate shall be secured with a mortgage.
- (6) Confiscation of funds shall be done with a warrant and money is kept in a safe or deposited in a separate account, deprived of the right to use it.
- (7) The decision to freeze the financial transaction or bank account shall be submitted by the court to the bank or to other financial institution.
- (8) No one can call upon a bank secret to avoid execution of a court decision for temporary freezing, confiscation or retention of funds deposited in a bank.

#### **Article 221**

A decision for temporary securing of items or property may be issued by the court upon a request of other country in cases determined in international treaties, ratified in compliance with the Constitution of the [former Yugoslav] Republic of Macedonia.

#### **Article 222**

(1) The decision referred to in Article 220 of this Law shall not allow confiscation of:

- documents or other deliverables of state authorities the publication of which would harm the official, state or military secret, unless it is otherwise decided by the competent body,
- written communication of the defendant to the defence attorney and the persons referred to in Article 239 paragraph (1) of this Law, unless the defendant hands them over voluntarily,
- technical recordings in possession of the persons referred to in Article 239 paragraph (1) of this Law, which were recorded as facts for which they are exempted of the obligation to testify,
- notes, excerpts from the registry and similar documents possessed by the persons referred to in Article 239 paragraph (1) of this Law, made as facts which they heard from the defendant while performing their duty,
- notes on facts taken by journalists and their editors in public information media from information source and data acknowledged while performing their duties, used in editing public information media, possessed by them or by the editor's office in which they are employed.

(2) The prohibition referred to in paragraph (1) of this Article shall not be applied:

- to the defence attorney or the person exempted of the obligation to testify pursuant to Article 239 paragraph (1) of this Law, if there is reasonable suspicion that the defendant was assisted in the perpetration of the criminal offence or was assisted after the criminal offence was perpetrated, or the accomplices acted in order to conceal him, and
- if items are concerned which have to be seized according to the Criminal Code.

(3) The prohibition for temporary confiscation of documents, items and technical recordings referred to in paragraph (1) of this Article shall not be applied for criminal offences against persons older than 65, children and minors. Data kept in the devices for automated i.e. electronic data processing and media in which such data are kept, upon a request of the investigating judge, the chamber or the judging judge must be handed over to the authorities of the criminal procedure in a legible and understandable form.

#### **Article 223**

- (1) The measures for temporary securing and confiscation of items or property shall be determined in a court decision, issued by the investigating judge during the investigation, the court chamber after the bill of indictment is lodged, i.e. the judging judge.
- (2) The criminal chamber referred to in Article 22 paragraph (6) of this Law shall decide upon the appeal of the decision of the investigating judge, while the direct higher court shall decide upon the decision of the judging judge i.e. the chamber.
- (3) The items confiscated contrary to this article may not be used as evidence in the procedure.

#### **Article 224**

- (1) State authorities may deny showing or issuing their documents or other deliverables if they consider that the publication of its contents would be harmful for the state interests. If showing or issuing documents or other deliverables is denied, the chamber shall enact a final decision by (Article 22 paragraph 6).
- (2) Legal entities may request data regarding their work not to be published.

#### **Article 225**

- (1) If documents which may be used as evidence are temporary seized, they shall be listed in an inventory. If this is not possible, the documents shall be placed in an envelope and sealed. The owner of the documents may also put his stamp on the envelope.
- (2) The person of whom the documents are seized shall be summoned to witness the opening of the envelope. If the person does not appear to the invitation or is absent, the envelope shall be opened, and the documents shall be reviewed and signed in his absence.
- (3) When reviewing the documents, attention must be paid their content not to be revealed to unauthorized persons.

#### **Article 226**

- (1) The investigating judge may give an order to the legal persons in the field of post, telegraph and other traffic, with the receipt for the received to keep and to give to the investigating judge the letters, telegrams and other parcels addressed to the accused or which he addresses if there are circumstances according to which it could be expected that these parcels may serve as evidence in the procedure.
- (2) The letters and other parcels are opened by the investigating judge in presence of two witnesses. While opening it will be considered the seals not to be damaged and the case and address will be kept. Minutes will be constructed for the opening.
- (3) If the interest of the procedure allows, the contents of the parcel may be announced fully or partially to the accused i.e. the person to whom it is addressed and it may be handed over to him. If the accused is absent the parcel will be announced or given to some of his relatives and if not, it will be handed to the expediter if that does not inflict the interests of the procedure.

#### **Article 227**

- (1) The items which are temporary confiscated in the course of the criminal procedure shall be returned to the owner i.e. the person who possesses them if the procedure is terminated and there are no reasons for their confiscation (Article 532).

- (2) Upon cessation of the reason for confiscation, retention or freezing, the investigating judge shall issue a decision for their release and return.
- (3) The decision referred to in paragraph (2) of this Article shall be immediately submitted to the respective financial or other institution.

### **3. Processing with suspicious objects**

#### **Article 228**

- (1) If a strange object is found with the accused, and the person who owns it is not known, the body conducting the procedure will describe the object and the description will be announced on the board at the body of that municipality in which region the accused lives or the crime was committed. In the announcement, the owner of the object will be invited to reply within one year from the day of the announcement and if not, the object will be sold. The money from the sale of the object is contributed to the budget.
- (2) If they are objects of considerable value the announcement may be performed in the daily newspapers.
- (3) If the object is liable to damaging or its keeping is connected with significant expenses, it will be sold according to provisions valid for the executing procedure and the money will be kept as a court deposit.
- (4) According to the provision of paragraph 3 of this Article it will be proceeded in the same manner when the object belongs to an escaped person or to an unknown criminal.

#### **Article 229**

- (1) If within a year no one replies for the object or for the money gained from the sold object, a decision will be brought the object to become a state property i.e. the money to be contributed to the budget.
- (2) The owner of the object has a right through a dispute to request for the return of the object or of the money gained with the sale of the object. The obsolescence of this right runs since the day of the announcement.

### **4. Examination of the accused**

#### **Article 230**

- (1) When the accused is questioned for the first time, he will be asked for his name, nickname if he has so, names of his parents, maiden name of his mother, his address, his date of birth, his nationality and citizenship, his occupation, his family status, if he is literate, which schools he finished, if he has and where and when he served the army, i.e. if he has a rank a reserve junior officer, officer or army officer, if he is registered in the army register and in which competent body of defence, if he was decorated, what is his property condition, if he has been where and why he was convicted, if he has or when he served the verdict, if there is a procedure for another crime against him, and if he is a minor who his legal representative is. The accused will be instructed that he is obliged to answer the summons and to announce each alternation of his address or intention to alter his residence immediately and he will be warned of the consequences if he does not act so.
- (2) Afterwards the accused will be informed of his accusation and for the grounds of suspicion against him and he will be asked what he has to state in his defence and he will be informed that he is not obliged to speak for his defence nor answer the questions.
- (3) The accused is examined orally. During the examination the accused may be allowed to use his own notes.
- (4) During the examination the accused is to be allowed to continue his elaboration in order to clarify all circumstances which are imposed on him and to state all facts which serve on behalf of his defence.
- (5) When the accused has finished his statement, if necessary he will be asked questions in order the gaps to be supplemented and the oppositions or any unclearness in his statement to be eliminated.
- (6) The examination must be conducted in the manner that the personality of the accused is fully respected.
- (7) Against the accused must not be used force, threats or other similar means (Article 251, paragraph 2) in order to extort his statement or confession.
- (8) The accused may be examined in absence of a counsel only if he has explicitly denied his right, and his defence is not compulsory or if within 24 hours from the moment he has been instructed of his right (Article 63, paragraph 2) he does not provide himself a counsel unless in case of a compulsory defence.
- (9) If it has been proceeded contrary to the provisions of paragraphs 7 and 8 of this Article or if the statement of the accused under paragraph 8 of this Article for the presence of a counsel is not notified in the minutes, upon the statement of the accused a court decision cannot be based.

#### **Article 231**

- (1) The questions for the accused are to be set clearly and comprehensibly for him to understand them fully. In the examination, it must not be approached as if the accused has confessed something which he has not, nor may any questions be set in the way that the answers are already contained in them. Deceit must not be used against the accused in order to extort his statement or confession.
- (2) If the latter statements of the accused differ from the former ones, especially if the accused revokes his confession, he will be asked to state his reasons for the different statements i.e. why he revokes his confession.

**Article 232**

- (1) The accused may be confronted with a witness or another accused if their statements disagree in respect of significant facts.
- (2) The confronted accused will be examined separately for each circumstance in which their statements do not mutually agree and their answer will be included in the minutes.

**Article 233**

The objects which are in connection with the crime or serve as evidence will be shown to the accused for recognition after he has previously described them. If these objects cannot be brought on the very place, the accused may be escorted to the place where they are.

**Article 234**

- (1) The statement of the accused is inserted in the minutes in a narrative form and the questions and answers will be inserted in the minutes only if it is necessary.
- (2) It will be allowed the accused to pronounce his statement himself for the minutes.

**Article 235**

The court is obliged apart from the confession of the accused to collect other evidence. If the confession is clear and completed with evidence, the further collection of evidence will be undertaken only on the proposal of the prosecutor.

**Article 236**

- (1) The examination of the accused will be performed by an assistance of an interpreter in cases proscribed in this Code.
- (2) If the accused is deaf, he will receive his questions in writing, and if he is dumb, he will answer in writing. If the examination cannot be performed in this manner, a person who can communicate with the accused functioning as an interpreter will be called.
- (3) If the interpreter is not under oath, he will take an oath that he will translate originally and faithfully the questions directed to the accused and his statements.
- (4) Provisions of this Code referring to the experts are accordingly applied to the interpreters.

**5. Hearing of witnesses**

**Article 237**

- (1) As witnesses are summoned the persons who are likely to make statements for the crime and criminal and for other important circumstances.
- (2) The damaged, the damaged as a plaintiff and the private prosecutor may be heard as witnesses.
- (3) Anyone summoned as a witness is obliged to answer the court summons, and if it is not proscribed differently with this Code, the person is obliged to act as a witness.

**Article 238**

The following persons cannot be heard as witnesses:

- 1.) the person who with the statement would violate his duty of keeping an official or military secret until his competent body releases him from his duty, and
- 2.) the counsel of the accused for what he has been entrusted with by the accused as his counsel, unless the accused himself requires it.

**Article 239**

- 1.) The following persons are released from their duty to be witnesses:
  - 1.) marital and illegitimate spouse of the accused;
  - 2.) blood relatives of the accused of first line, relatives of further line to the third degree as well as in-laws to the second degree;
  - 3.) an adopted child or parent who has adopted of the accused;
  - 4.) religious confessor to whom the accused or other persons has confessed;
  - 5.) a lawyer, physician, social worker, psychologist or other person for facts which they learned executing their duty in reference of their duty to keep it as a classified secret while executing their professional duties.
- (2) The court which conducts the procedure is obliged to warn the persons that they need not be witnesses, i.e. persons mentioned in paragraph 1 of this Article before their hearing or as soon as it learns about their relationship to the accused. The warning and the answer are included in the minutes.
- (3) Considering his age and mental development the minor who is not capable to understand the meaning of his right that he need not be a witness cannot be heard as a witness.
- (4) The person who is allowed not to be a witness to one of the accused is released from his duty of witnessing to the other accused persons if his statement according to the nature of the circumstances cannot be limited only to the other accused.

#### **Article 240**

If a person was heard as a witness but who could not have been heard as a witness (Article 238) or the person who need not be a witness (Article 239) and he was not warned or has not explicitly denied his right or if the warning and the denial are not notified in the minutes, or if a minor was heard who could have not understood the meaning of his right that he need not witness or if the statement of the witness is extorted by force, by threat or by other similar forbidden means (Article 273, paragraph 2), a court decision cannot be based upon the statements of the above mentioned witnesses.

#### **Article 241**

The witness is not obliged to answer particular questions if he is likely to expose himself or his close relatives (Article 239, paragraph 1, items 1 to 3) to severe embarrassment, significant material damage or criminal prosecution.

#### **Article 242**

- (1) The summoning of the witness is performed by a delivery of a written court summons in which the following will be notified: the name and occupation of the summoned, time and place of arrival, criminal case upon which he is summoned, notification that he is summoned as a witness and warning on the consequences of his unjustified absence (Article 250).
- (2) The summoning for witnessing of a minor who is not sixteen yet is performed by his parents i.e. authorized representatives, unless it is impossible due to the necessity to act urgently or due to other circumstances.
- (3) The witnesses who due to their old age, illness or severe physical handicaps cannot answer the court summons may be examined in their residence.

#### **Article 243**

- (1) Witnesses are heard separately and without the presence of other witnesses. They are obliged to answer orally.
- (2) The witness will be previously warned that he is obliged to speak the truth and must not conceal anything and hereby he will be warned that giving false statements is crime. The witness will be warned that he is not obliged to answer the questions encompassed in Article 241 of this Code and the warning will be included in the minutes.
- (3) Afterwards the witness will be asked about his name, father's name, occupation, residence, place of birth, age and his relationship to the accused and damaged. The witness will be warned that he is obliged to inform the court of his new address or residence.
- (4) During examination of a minor, especially when damaged with a crime, it will be acted carefully so that the hearing does not inflict the psychical condition of the minor. If it is necessary, the hearing of the minor will be performed by an assistance of a pedagogue or another specialized person.
- (5) If the court considers that it is necessary for the protection of a minor victim of trafficking in human beings, violence or sexual abuse, the hearing shall be done in absence of the parties in a separate room where the child is located, but they may ask questions through the investigating judge, pedagogue, psychologist or other expert present in the room where the person is located. The court shall decide whether the hearing shall be recorded as a video or audio recording so that it can be used later as evidence in the proceedings or it shall be monitored directly by applying technical communication devices (video-conference or other video link).

#### **Article 244**

- (1) If it is likely that the given statement or answer to a certain question the witness, justice associate or victim, i.e. the damaged party is exposed, personally or exposes a close person to him, to serious threat against his life, health or physical integrity (threatened witness), the threatened witness may refuse to give a statement or present data referred to in Article 243 paragraph (3) of this Law until conditions are provided for his protection.
- (2) The protection of the threatened witness shall comprise of special manner of hearing and participation in the procedure defined in this Law and application of protective measures beyond the procedure foreseen in a special law.
- (3) If the investigating judge considers that the threat referred to in paragraph (1) of this Article is reasonable, he shall terminate the hearing and undertake immediate actions in compliance with the provisions for protection of witnesses, justice associates or victims determined in this Law.
- (4) If the investigating judge considers that the request referred to in paragraph (1) of this Article is unfounded he shall act in accordance with Article 294 of this Law.

#### **Article 245**

- (1) After the general questions, the witness is called to state everything familiar to him on the case, after which he will be asked questions in order the statements to be checked, supplemented and clarified. During the hearing of the witness it is not allowed to be used deceit, nor asking questions in which the answer is included.
- (2) The witness will be always asked how he is familiar with the issues he is witnessing of.



- (3) Witnesses may be confronted if their statements do not agree in respect of significant facts. The confronted witnesses will be examined separately for each circumstance for which their statements mutually disagree and their answer will be inserted in the minutes. Only two witnesses can be confronted at the same time.
- (4) The damaged heard as a witness will be asked whether he chooses to realize his lawful property request in the criminal procedure.

**Article 246**

If it is necessary to be certified whether the witness is familiar with the person or objects, first he will be asked to describe the signs in which he i.e. they are different from the other persons or objects, then he will be shown for recognition the suspect together with other persons not familiar to the witness i.e. the object, if possible together with objects of the same kind.

**Article 247**

If the hearing of the witness is performed by an assistance of an interpreter or if he is deaf or dumb, his hearing is performed in the manner included in Article 236 of this Code.

**Article 248**

It may be asked from the witness to take an oath. Before the trial the witness may take an oath only if there is a possibility that due to an illness or for other reasons he could not attend the trial. The reason for the oath is included in the minutes. The oath is taken in the manner proscribed in Article 343 of this Code.

**Article 249**

The following persons must not take an oath:

- 1.) who are not adults at the moment of the hearing; and
- 2.) for whom it has been proved or there is a justified suspicion that they committed crime or participated in the crime for which they are heard.

**Article 250**

- (1) If the witness who was summoned does not come and does not justify his absence or without an approval or justified reason leaves the place where he is to be heard, it may be ordered the witness to be apprehended forcefully and he may be punished with a fine penalty according to Article 75, paragraph 1 of this Code.
- (2) If the witness comes and after he has been warned of the consequences without a lawful reason does not choose to witness, he may be punished with a fine penalty under Article 75, paragraph 3 of this Code
- (3) On the appeal against the decision with which fine penalty is pronounced, the Chamber decides (Article 22, paragraph 6). The appeal against the decision for detention does not keep from the execution of the decision.
- (4) If military officials or police members refuse to testify, their competent command shall be informed.

Chapter XXX

**PROCEDURE FOR APPROVAL OF INTERNATIONAL JUDICIAL ASSISTANCE AND EXECUTION OF INTERNATIONAL TREATIES IN JUDICIAL CRIMINAL CASES**

**Article 551**

International judicial criminal assistance is performed according to the provisions of this Code, if it is not otherwise determined in the provisions of the European Convention on Mutual Legal Assistance in Criminal Matters with its protocols, the UN Convention on Transnational Organized Crime and in other international agreements ratified in compliance with the Constitution of the [former Yugoslav] Republic of Macedonia.

**Article 552**

- (1) The applications of the domestic courts for judicial assistance in the criminal cases are delivered to the foreign agencies in a diplomatic course. In the same manner to the domestic courts are delivered the applications of the foreign agencies for judicial assistance.
- (2) In emergencies, if there is reciprocity, the applications for judicial assistance may be delivered by the Ministry of internal affairs.
- (3) By law it will be determined which courts will be competent for giving international judicial criminal assistance and one court may be assigned to perform the work for all the courts on a certain region.

**Article 553**

- (1) The Ministry of Foreign Affairs will direct the application of the foreign agency for judicial assistance to the Ministry of Justice which will direct it for a procedure to the court on which region the person resides, who has to be handed a writ or who has to be examined or confronted or on which region another investigating act has to be conducted.

- (2) In cases under Article 552, paragraph 2 of this Code, the Ministry of Internal Affairs directs the application to the court by the Ministry of Justice.
- (3) On the permission and manner of the conducting of the act, which is the case in the application of the foreign agency, decides the court according to the domestic regulations.
- (4) When the application refers to a crime for which according to the domestic regulations extradition is not allowed, the court will request an instruction from the Ministry of Justice.

#### **Article 554**

- (1) The domestic courts may accept the application of the foreign agency with which it is requested execution of the criminal sentence by the foreign court if it is determined with an international treaty, if there is reciprocity and if the sanction is also pronounced by the domestic court according to the Criminal Code.
- (2) The competent court reaches the verdict at the Chamber under Article 22, paragraph 6 of this Code. The public prosecutor and the counsel will be informed of the session of the Chamber.
- (3) The local competence of the court is determined according to the last residence of the convicted person in the [former Yugoslav] Republic of Macedonia- according to his place of birth. If the convicted person has not a residence nor was born in the [former Yugoslav] Republic of Macedonia, the Supreme Court of the [former Yugoslav] Republic of Macedonia will determine one of the courts to be competent before which the procedure will be conducted.
- (4) The competent court is the court which is determined by law.
- (5) In the pronouncement of the verdict under paragraph 2 of this Article, the court will insert the complete pronouncement and the title of the court with the foreign verdict and will pronounce a sanction. In the elaboration of the verdict will be presented the reasons for which the court has pronounced the sanction.
- (6) Against the verdict may appeal the public prosecutor and the convicted person or his counsel.
- (7) If the foreign citizen convicted by a domestic court or if the person authorized with an agreement submits an application to the first degree court the convicted person to serve the sentence in his country, the first degree court will act according to the international treaty.
- (8) The execution of verdicts of the international court shall be done according to an international agreement for its establishment ratified in compliance with the Constitution of the [former Yugoslav] Republic of Macedonia.
- (9) The Criminal Chamber referred to in Article 22 paragraph (6) of this Law, to the local-competent first instance court, shall confirm in a verdict the authenticity and executability of the verdict of the international court and shall determine the manner of execution of sanctions or other measures.

#### **Article 555**

- (1) The domestic courts shall act upon the request of the foreign authority when applying provisional security measures referred to in Article 220 of this Law, or when executing the measure confiscation of property and property benefit and seizure of items, when they act in compliance with the provisions of international agreements.
- (2) Confiscated property and property benefit or seized items may be returned by a court decision of a foreign country under conditions determined in international agreement.
- (3) The domestic courts, under conditions determined in international agreement, may request from the foreign authorities to determine provisional security measures referred to in Article 220 of this Law and execution of the measure confiscation of property and property benefit and seizure of items.
- (4) In case it is stipulated in an international agreement that the confiscated property and property benefit should be divided between the [former Yugoslav] Republic of Macedonia and other country, such proposal to the foreign country shall be submitted by the Ministry of Justice.

#### **Article 556**

Criminal offences such as production and circulation of counterfeited money, unauthorized production, procession and sale of narcotic drugs and poisons, trafficking in women, production and distribution of pornography, as well as other criminal offences for which, according to the international agreements, centralization of data is foreseen, the court competent for the criminal procedure shall be obliged, without delay, to submit to the Ministry of Internal Affairs data concerning the criminal offence, the perpetrator and the final verdict.

#### **Article 557**

- (1) If on the territory of the [former Yugoslav] Republic of Macedonia a crime has been committed by a foreigner who has a residence in a foreign country, out of the circumstances under Article 560 of this Code, to that country may be transferred all criminal records for the criminal prosecution and trial, if the foreign country is not against it.
- (2) Before the decision for investigation is brought, the decision for transferring is brought by the competent public prosecutor. During the investigation, the decision on the proposal of the public prosecutor is brought by the investigating judge, and by the beginning of the trial, the Chamber (Article 22, paragraph 6).
- (3) Transferring may be allowed for crimes for which a sentence to ten years is anticipated, as well as for the crimes - endangering the public traffic.

- (4) If the damaged is a citizen of the [former Yugoslav] Republic of Macedonia, transferring is not allowed if he resists it, unless it is allowed security for realization of his lawful property request.
- (5) If the accused is detained, from the foreign country it will be requested in the briefest possible way within 40 days to state whether it undertakes the prosecution.

#### **Article 558**

- (1) The request by the foreign country in the [former Yugoslav] Republic of Macedonia to be undertaken prosecution of a citizen of the [former Yugoslav] Republic of Macedonia or of a person having residence in the [former Yugoslav] Republic of Macedonia for a crime committed abroad is directed with the records to the competent public prosecutor on whose region the person has his residence.
- (2) If to the competent agency of the foreign country is submitted the lawful property request, it will be proceeded as if the request is submitted to the competent court.
- (3) Of the refusal the criminal prosecution to be undertaken as well as whether the decision is legally valid, which has been brought in the criminal procedure, will be informed the foreign country which has submitted the request.

### **Chapter XXXI**

#### **PROCEDURE FOR EXTRADITION OF ACCUSED AND CONVICTED PERSONS**

#### **Article 559**

Extradition of accused or convicted persons will be requested and conducted according to the provisions of this Code, if it is not otherwise determined in the European Convention on Extradition, in its protocols and in other international agreements ratified in compliance with the Constitution of the [former Yugoslav] Republic of Macedonia.

#### **Article 560**

Presumptions for extradition are:

- a) the person whose extradition is requested not to be a citizen of the [former Yugoslav] Republic of Macedonia;
- b) the crime for which there is a request for extradition not to be committed on the territory of the [former Yugoslav] Republic of Macedonia, against it or against its citizen;
- c) the crime for which there is a request for extradition to be a crime both according to the domestic law and the law of the country in which it has been committed;
- d) according to the domestic law the criminal prosecution not to be obsolete or the execution of the punishment not to be obsolete before the foreigner is detained or examined as an accused;
- e) the foreigner whose extradition is requested not to be convicted before by the domestic court for the same crime, or for the same crime by the domestic court not to be released with a legally valid decision, or against him the criminal procedure not to be interrupted or the prosecution not to be rejected with a legally valid decision, or for the same crime procedure not to be initiated in the [former Yugoslav] Republic of Macedonia or against it or against a citizen of the [former Yugoslav] Republic of Macedonia, unless a guarantee is not issued for realization of the lawful property request of the damaged;
- f) the identity of the person, whose extradition is requested to be determined, and
- g) there to be sufficient evidence for a grounded suspicion that the foreigner, whose extradition is requested, committed certain crime or that there is a legally valid verdict.

#### **Article 561**

- (1) Procedure for extradition of accused or convicted foreigners is initiated on the application of the foreign country.
- (2) The application for extradition is submitted in a diplomatic course.
- (3) To the application for extradition must be enclosed:
  - a) means for determination of the identity of the accused i.e. the convicted person (exact description, photographs, fingerprints and similar);
  - b) certificate or other data for the citizenship of the foreigner;
  - c) the prosecution act or the verdict or the decision for detention or another act which is equivalent to this decision, in original or in a certified copy in which has to be noted the name of the person whose extradition is requested and other necessary data for determination of his identity, description of the crime, lawful title of the crime and evidence for the grounded suspicion, and
  - d) an extract from the text of the Criminal Code of the foreign country which is to be applied or has been applied against the accused for the crime for which there is a request for extradition, and if the crime has been committed on the territory of a third country, also an extract from the text of the Criminal Code of that country.
- (4) If the application and the enclosed documents are in a foreign language, it also has to be enclosed a certified translation into the Macedonian language.

#### **Article 562**

- (1) The Ministry of External Affairs delivers the application for extradition of a foreigner by the Ministry of Justice to the investigating judge of the court on whose region the foreigner has resided or on whose region he will be caught.
- (2) If the permanent or temporary residence of the foreigner whose extradition is requested is not known, it will be previously determined by the assistance of the police.
- (3) If the application is appropriate to the conditions in Article 561 of this Code, the investigating judge will issue an order the foreigner to be detained if there are reasons under Article 199 of this Code, i.e. will undertake other security measures his presence to be secured, unless from the application itself it is obvious that there is no question for extradition.
- (4) After he has determined the identity of the foreigner, without any delay the investigating judge will inform the foreigner why and on the basis of which evidence his extradition is requested and he will call him to make a statement at his defence.
- (5) For the examination and the defence will be constructed a minutes. The investigating judge will instruct the foreigner that he may choose a counsel or he will assign him a counsel ex officio, if it is a crime for which defence is compulsory according to this Code.

#### **Article 563**

- (1) In emergencies, when there is a danger that the foreigner might abscond or hide, the Ministry of Internal Affairs may arrest the foreigner to be delivered to the investigating judge of the competent court on the basis of the application of the competent foreign agency, without reference how it is directed. In the application have to be included the data for the certification of the identity of the foreigner, the nature and the title of the crime, the number of the decision, the date, place and title of the foreign agency which has determined the detention and a statement that the extradition will be requested regularly.
- (2) When detention is determined in reference of paragraph 1 of this Article, after the examination, the investigating judge will inform of the detention the Ministry of Foreign Affairs by the Ministry of Justice.
- (3) The investigating judge shall release the foreigner when the reasons for his detention have ceased or if the extradition request is not submitted within the specified time period taking into account the distance of the requesting country, and that the time period specified for submission of the extradition request cannot be longer than 40 days since the day of detention of the foreigner, and that the time period for the foreigner to be extradited cannot be longer than 180 days since the day of his detention. The foreign country shall be informed on this time period.
- (4) When the proscribed application is submitted within the determined period, the investigating judge will proceed according to Article 562, paragraphs 3 and 4 of this Code.

#### **Article 564**

- (1) After the hearing of the public prosecutor and the counsel, if necessary the investigating judge will conduct other inspections in order to be certified whether there are conditions for the extradition of the foreigner i.e. for delivery of the objects on which or with which assistance the crime has been committed if the objects have been confiscated from the foreigner.
- (2) After the conducted inspections, the investigating judge will submit to the Chamber the inspection records and his opinion.
- (3) If against the foreigner whose extradition is requested there is a criminal procedure at the domestic court due to the same or another crime, the investigating judge will notify that in the records.

#### **Article 565**

- (1) If the Chamber of the competent court finds that the lawful presumptions for extradition are not fulfilled, it will bring a decision that the application for extradition is denied. The decision will be directed ex officio by that court to the Supreme Court of the [former Yugoslav] Republic of Macedonia, which after the hearing of the public prosecutor will confirm, cancel or alter the decision.
- (2) If the foreigner is detained, the Chamber may decide the foreigner to remain in detention until the legally valid decision is reached for the rejection of the extradition.
- (3) The legally valid decision with which the extradition is rejected will be directed by the Ministry of Justice to the Ministry of External Affairs, which will inform the foreign country of that.

#### **Article 566**

If the Chamber of the competent court finds that the lawful presumptions for extradition of the foreigner are fulfilled (Article 560), it will certify it with a decision. Against the decision the foreigner has a right to an appeal to the competent court.

#### **Article 567**

If the court on the appeal finds that the lawful conditions for extradition of the foreigner are fulfilled, i.e. if against that decision of the first degree court an appeal is not submitted, the case is directed to the Ministry of Justice, which will decide on the extradition.

**Article 568**

- (1) The Minister of Justice reaches a decision with which he allows or does not allow the extradition. The Minister of Justice may bring a decision the extradition to be postponed because of the fact that for another crime at the domestic court there is a criminal procedure against the foreigner whose extradition is requested or because the foreigner is serving a sentence in the [former Yugoslav] Republic of Macedonia.
- (2) The Minister of Justice will not allow extradition of a foreigner if he has a right to asylum in the [former Yugoslav] Republic of Macedonia or if it is in question a political or military crime. He may reject the extradition if they are in question crimes for which according to the domestic law is proscribed a sentence to three years or if the foreign court has pronounced a sentence of imprisonment to one year.
- (3) The Minister of Justice shall not allow extradition of a foreigner if there are serious reasons for suspicion that he may be subjected to torture or other cruel, inhumane or humiliating treatment or capital punishment.
- (4) Upon a proposal of the Minister of Justice, the Government of the [former Yugoslav] Republic of Macedonia may decide not to allow extradition if there are particularly justified state interests.

**Article 569**

- (1) In the decision with which it is allowed extradition of a foreigner, the Minister of Justice will note:
  - a) that the foreigner cannot be prosecuted for another crime committed before the extradition;
  - b) that against him cannot be executed a sentence for another crime committed before the extradition;
  - c) that against him cannot be applied a more severe punishment than the one he is convicted of, and
  - d) that he cannot be extradited to a third country due to prosecution for a crime committed before the allowed extradition.
- (2) Apart from the noted conditions, the Minister of Justice may set other conditions for extradition.

**Article 570**

- (1) Of the decision with which it is decided on the extradition will be informed the foreign country in a diplomatic course.
- (2) The decision with which the extradition is allowed will be directed to the Ministry of Internal Affairs which orders the foreigner to be apprehended to the border where on the agreed place he will be extradited to the agencies of the foreign country which has requested the extradition.

**Article 571**

- (1) If extradition of the same person is requested by several foreign countries for the same crime, the primacy will be given to the application of the country whose citizen the person is, and if that country does not request the extradition- to the application of the country on which territory the crime has been committed, and if the crime has been committed on the territory of several countries or if it is not known where it is committed- to the application of the country which has first requested for extradition.
- (2) If extradition of the same person is requested by several countries for different crimes, the primacy will be given to the application of that country whose citizen the person is, and if that country does not request extradition- to the application of the country on whose region is committed the most severe crime, and if the crimes are equally severe- to the application of the country which has first requested for extradition.

**Article 572**

- (1) If against the person who is in a foreign country, there is a criminal procedure in the [former Yugoslav] Republic of Macedonia or if the person who is in a foreign country is convicted by the domestic court, the Minister of Justice may submit an application for extradition.
- (2) The application is submitted to the foreign country in a diplomatic course and with it are enclosed the documents and data under Article 561 of this Code.

**Article 573**

- (1) When there is a danger that the person whose extradition is requested might either abscond or hide, before it is proceeded according to Article 572 of this Code, the Minister of Justice may request against that person to be undertaken necessary measures for his detention.
- (2) In the application for temporary detention will be particularly noted the data on the identity of the requested person, the nature and title of the crime, the number of the decision, the date, place and title of the body which has determined the detention, i.e. data on the verdict which is legally valid as well as the statement that the extradition will be requested regularly.
- (3) The time spent in detention which is determined by the foreign court, is not calculated in the period determined under Article 205, paragraph 1 of this Code.

**Article 574**

- (1) If the requested person is extradited, he may be criminally prosecuted, i.e. against him a sentence executed only for the crime for which the extradition has been allowed.

- (2) If that person has also been convicted with a legally valid verdict by the domestic court for other crimes committed before the extradition for which the extradition is not allowed, the provisions of Article 356 of this Code will be accordingly applied.
- (3) If extradition is allowed under particular conditions in view of the type or severity of the sentence which may be pronounced i.e. be executed and under these conditions is accepted, during the pronouncement of the sentence, the court is bound to those conditions, and if it is in question an execution of an already pronounced sentence, the court which has proceeded in last degree will alter the verdict and will accord the pronounced sentence to the conditions for extradition.
- (4) If the extradited person was detained in a foreign country for a crime for which he is extradited, the time which he spent in detention will be calculated in the sentence.

**Article 575**

- (1) If extradition is requested by a foreign country from another foreign country and the requested person has to be extradited through the territory of the [former Yugoslav] Republic of Macedonia, the extradition on the application of the interested country may be allowed by the Minister of Justice under condition that he is not a citizen of the [former Yugoslav] Republic of Macedonia and the extradition not to be performed for a political or military crime.
- (2) The application for extradition of the person through the territory of the [former Yugoslav] Republic of Macedonia has to contain all data under Article 561 of this Code.