

REPUBLIC OF SERBIA

**LAW ON MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS**

Belgrade, 2017

LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Note: This is a true translation of the original Law,
but it is not legally binding.

Original title:

ZAKON O MEĐUNARODNOJ PRAVNOJ POMOĆI U KRIVIČNIM STVARIMA

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LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS *

I BASIC PROVISIONS

Scope and Application of the Law

Article 1

This Law shall regulate the procedure of providing mutual legal assistance in criminal matters (hereinafter: mutual legal assistance) in cases in which no ratified international agreement exists or certain subject matters are not regulated under it.

Forms of Mutual Legal Assistance

Article 2

Mutual legal assistance shall include the following:

- 1) extradition of the accused or convicted person;
- 2) assumption and transfer of criminal prosecution;
- 3) execution of criminal judgement;
- 4) other forms of mutual legal assistance.

Provision of Mutual Legal Assistance

Article 3

Mutual legal assistance shall be provided in the proceedings pertaining to the criminal offence which, at the time the assistance is requested, falls within the jurisdiction of the court in the requesting state.

Mutual legal assistance shall also be provided in the proceedings initiated before the administrative authorities for the offence punishable under the legislation of the requesting state or the requested state, in case where a decision of an administrative authority may represent the grounds for instituting criminal proceedings.

Mutual legal assistance shall also be provided at the request of the International Court of Justice, International Criminal Court, European Court of Human Rights and other international institutions established under international agreements ratified by the Republic of Serbia.

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Competent Authorities

Article 4

The authorities competent to provide mutual legal assistance shall include national courts and public prosecutor's offices (hereinafter: national judicial authorities) specified under the law.

Certain actions in the mutual legal assistance procedure shall be performed by the ministry in charge of justice, ministry in charge of foreign affairs and ministry in charge of internal affairs.

The request for mutual legal assistance submitted to an incompetent authority shall, without delay, be forwarded to the authority competent to proceed, and the authority that has submitted the request shall be notified thereof.

Letter Rogatory

Article 5

The request for the provision of mutual legal assistance shall be submitted in the form of a letter rogatory.

The letter rogatory shall comprise the following:

- 1) name of the authority that has drawn up the letter rogatory;
- 2) name of the authority to whom the letter rogatory shall be addressed, and, if its accurate name is not known, it shall be designated "competent state authority" next to the name of the requested state;
- 3) legal grounds for the provision of mutual legal assistance;
- 4) designation of the criminal case, legal name of the criminal offence, text of a relevant provision of the law and a summary of the findings of fact;
- 5) description of the actions relating to the requested mutual legal assistance and reasons for submitting the letter rogatory;
- 6) information on the citizenship and other personal data of the person, i.e. name and seat of the legal entity in respect of which mutual legal assistance is being requested, including its capacity in the proceedings;
- 7) other data that may be relevant to proceeding upon the letter rogatory.

The letter rogatory, as well as any other supporting documents submitted by judicial and other competent authorities must be signed and stamped by the competent authority.

The letter rogatory and any other supporting documents shall be submitted along with their translations into the language of the requested state or translations into the English language. The translation must be certified by a sworn-in-court translator.

The request for mutual legal assistance which was not submitted in accordance with the provisions of this Law shall be returned to be corrected or supplemented, with the determined time limit which may not exceed two months.

Submission of Letter Rogatory and Other Supporting Documents

Article 6

The letter rogatory and other supporting documents of the national judicial authority shall be submitted to a foreign authority through the ministry in charge of justice. At the request of

the requested state, the letter rogatory and other supporting documents shall be submitted through diplomatic channels.

The letter rogatory and other supporting documents referred to in paragraph 1 of this Article, under the terms of reciprocity:

- 1) shall be directly submitted to a foreign judicial authority;
- 2) may, in case of urgency, be submitted through the International Criminal Police Organisation (INTERPOL).

The letter rogatory and other supporting documents of a foreign authority shall be submitted to the national judicial authority in accordance with paragraphs 1 and 2 of this Article.

In cases referred to in paragraph 2 of this Article, the national judicial authority shall submit a copy of the letter rogatory to the ministry in charge of justice.

Preconditions for the Provision of Mutual Legal Assistance

Article 7

Preconditions for the provision of mutual legal assistance shall mean:

- 1) that the criminal offence, in respect of which mutual legal assistance is requested, constitutes the criminal offence under the legislation of the Republic of Serbia;
- 2) that the proceedings for the same criminal offence have not been finally concluded before the national court, i.e. that a criminal sanction has not been completely executed;
- 3) that the criminal prosecution, i.e. execution of a criminal sanction is not excluded due to the statute of limitation, amnesty or pardon;
- 4) that the request for the provision of mutual legal assistance does not refer to a political criminal offence or an offence connected with a political criminal offence, i.e. to the criminal offence comprising exclusively violation of military duties;
- 5) that the provision of mutual legal assistance would not infringe the sovereignty, security, public order or other interests of essential importance for the Republic of Serbia.

Notwithstanding paragraph 1, item 4) of this Article, mutual legal assistance shall be provided for the criminal offence against the international humanitarian law not subject to the statute of limitation.

The competent judicial authority shall decide whether or not the preconditions referred to in items 1) through 3), paragraph 1 of this Article have been fulfilled, whereas the minister responsible for justice shall decide, i.e. provide his/her opinion on whether the preconditions referred to in items 4) and 5), paragraph 1 of this Article have been fulfilled.

Reciprocity

Article 8

National judicial authorities shall provide mutual legal assistance under the terms of reciprocity. At the request of the national judicial authority, the ministry in charge of justice shall provide notification of the existence of reciprocity.

Should there be no information on reciprocity, reciprocity shall be assumed to exist.

Secrecy of Information

Article 9

State authorities shall be obliged to keep the information received during the provision of mutual legal assistance secret.

Personal data may be used solely in criminal or administrative proceedings in respect of which a letter rogatory has been submitted.

Language

Article 10

The procedure of mutual legal assistance shall be conducted in the Serbian language.

The procedure referred to in paragraph 1 of this Article shall also be conducted in the language of a national minority before the national judicial authority in the territory of which the subject language is in official use, in accordance with the Constitution and law.

Expenses

Article 11

The expenses incurred during the provision of mutual legal assistance shall be borne by the requested state unless otherwise stipulated in this Law.

***Mutatis Mutandis* Application of the Law**

Article 12

Unless otherwise stipulated in this Law, the provisions of the Criminal Procedure Code and the law regulating the organisation and jurisdiction of courts and public prosecutor's offices shall apply *mutatis mutandis* in the procedure of mutual legal assistance.

II EXTRADITION OF THE ACCUSED OR CONVICTED PERSON

1. EXTRADITION OF THE ACCUSED OR CONVICTED PERSON TO A FOREIGN STATE

1) Basic Provisions

Subject of Extradition

Article 13

Extradition of the accused or convicted person to a foreign state shall be granted:

1) for the purpose of conducting criminal proceedings for a criminal offence which is punishable by imprisonment of one year or more severe punishment under the law of the Republic of Serbia and the law of the requesting state;

2) for the purpose of executing a criminal sanction of minimum duration of four months imposed by the requesting state's court for a criminal offence referred to in item 1) of this paragraph.

Should the letter rogatory pertain to several criminal offences, out of which some do not meet the conditions referred to in paragraph 1 of this Article, extradition may be granted for such criminal offences as well.

Principle of Speciality

Article 14

Should extradition be granted, the extradited person may not be prosecuted for criminal offences, subjected to the execution of a criminal sanction or extradited to a third state for a criminal offence committed prior to extradition and not being the subject of extradition.

The conditions referred to in paragraph 1 of this Article shall not apply:

1) if the extradited person has explicitly waived the guarantee referred to in paragraph 1 of this Article;

2) if the extradited person, although having an opportunity to do so, did not leave the territory of the state which he/she was extradited to within 45 days from the day he/she was paroled or the day when a criminal sanction was fully served, or if he/she returned to the territory of the subject state.

Documents

Article 15

The letter rogatory shall be accompanied by the following documents:

1) means for establishing proper identity of the accused or convicted person (an accurate description, a photograph, finger prints, etc.);

2) a certificate or other information on the citizenship of the accused or convicted person;

3) a decision on the initiation of criminal proceedings, the indictment, the decision on detention or the judgement;

4) evidence presented on the existence of the reasonable doubt.

Preconditions for Extradition

Article 16

In addition to the preconditions stipulated in Article 7 of this Law, the preconditions for extradition shall be as follows:

1) that the person whose extradition is requested is not a national of the Republic of Serbia;

2) that the offence, in respect of which extradition is requested, has been neither committed in the territory of the Republic of Serbia, nor against the Republic of Serbia or any of its citizens;

3) that no criminal proceedings are conducted against the same person in the Republic of Serbia for the criminal offence in respect of which extradition is requested;

4) that, according to the national legislation, conditions exist for reopening the criminal proceedings for the criminal offence in respect of which extradition is requested for the person against whom the proceedings have been finally concluded before the national court;

5) that proper identity of the person whose extradition is requested has been established;

6) that there is sufficient evidence to support the reasonable doubt, i.e. that there is a final court decision that the person whose extradition is requested has committed a criminal offence in respect of which extradition is requested;

7) that the requesting state guarantees that, in case of conviction *in absentia*, the proceedings will be repeated in the presence of the extradited person;

8) that the requesting state guarantees that the death penalty, which is prescribed for a criminal offence in respect of which extradition is requested, will not be imposed, that is, executed.

Concurrence of Letters Rogatory

Article 17

If several requesting states have concurrently submitted letters rogatory for the extradition of the same person for the same or different criminal offences, the decision on extradition shall be rendered taking into consideration the circumstances of the subject case, in particular the territory in which the criminal offence was committed, severity of the criminal offence, order of submission of requests, citizenship of the person whose extradition is requested and the possibilities of extradition to a third state.

The decision referred to in paragraph 1 of this Article must be reasoned.

2) Extradition Procedure

a) Proceedings before the Investigating Judge

Actions Related to the Letter Rogatory

Article 18

The ministry in charge of justice shall forward the letter rogatory to the court in the territory of which the person requested for extradition resides or finds himself/herself. Should the place concerned be unknown, the police shall identify where the person requested for extradition is.

If the letter rogatory was submitted in accordance with Articles 5 and 15 of this Law, the investigating judge shall issue an order for bringing in the person requested for extradition. The order shall be executed by the police who shall immediately bring the person concerned before the investigating judge.

Search of the Person and Premises and Confiscation of Objects

Article 19

At the request of the requesting state, the investigating judge may order the search of the person requested for extradition and the premises in which such a person resides.

The objects obtained through a criminal offence, which were found during search, and the proceeds from the criminal offence shall be temporarily seized from the person requested for extradition.

The temporary seizure referred to in paragraph 2 of this Article shall be in force until the decision on detention of the person requested for extradition or on another measure for securing the presence of the person requested for extradition is passed, but not longer than 48 hours as of the moment he/she was arrested.

If the objects referred to in paragraph 2 of this Article are mandatorily seized under the law of the Republic of Serbia, the investigating judge may temporarily hand them over to the requesting state on condition that they are returned in the time limit specified by the judge.

Should extradition be granted, the objects and proceeds referred to in paragraph 2 of this Article shall be handed over to the requesting state.

Legal Advice

Article 20

Once he/she has established proper identity of the person requested for extradition, the investigating judge shall notify him/her on the reasons for arrest, the evidence upon which the request for extradition is based, and advise him/her on his/her rights that:

- 1) he/she is not obliged to give any statement;
- 2) he/she may have a defence attorney;
- 3) the defence attorney shall be present at the examination;
- 4) he/she may give his/her consent that he/she may be extradited under a simplified procedure.

Should the person requested for extradition waive his/her right to a defence attorney, or should he/she fail to retain the services of the one within 24 hours as of the time when he/she was advised on his/her right, he/she shall be assigned a defence attorney *ex officio*.

The investigating judge shall notify the public prosecutor of the arrest of the person requested for extradition.

Interrogation

Article 21

An investigating judge shall interrogate the person requested for extradition about all the circumstances relevant for establishing the existence of preconditions for extradition, and particularly about his/her personal circumstances, citizenship, relation to the requesting state and the request for extradition.

The interrogation shall be attended by the public prosecutor and the defence attorney, who may ask questions to the person requested for extradition.

Records on the interrogation shall be kept.

Detention

Article 22

Following the interrogation, the investigating judge may order detention:

- 1) if such circumstances exist which indicate that the person requested for extradition will hide or escape with a view to hindering the decision-making process on the letter rogatory or the carrying out of extradition;

2) if such circumstances exist which indicate that the person requested for extradition will hinder the collecting of evidence in the extradition procedure or in criminal proceedings before the court of the requesting state.

Detention may not last longer than the moment of the execution of the decision on extradition, and not longer than a year from the date of detaining the person requested for extradition. Upon expiry of every two months from the moment the decision on detention became final, the court shall *ex officio* examine whether or not there are reasons for the extension of detention or for its revocation.

If justified by special reasons, the investigating judge may, instead of detention, order another measure to secure the presence of the person requested for extradition.

Examination of Preconditions for Extradition

Article 23

The investigating judge shall take appropriate actions in order to determine whether or not there exist the preconditions for extradition, i.e. for handing over the objects referred to in Article 19, paragraph 2 of this Law.

If the requesting state has not provided the guarantees in terms of Article 16, items 7 and 8 of this Law, the investigating judge shall request from it to provide such guarantees within the time limit that cannot exceed 30 days.

After the actions referred to in paragraph 1 of this Article have been taken, the investigating judge shall forward the documents to the council consisting of three judges (hereinafter: Extra-procedural Council).

If criminal proceedings are pending before the national court against the person requested for extradition for the same or some other criminal offence, or the person concerned is serving the prison sentence or some other criminal sanction constituting deprivation of liberty, the investigating judge shall compose the records thereof in the case files.

Request for Detention prior to the Submission of the Letter Rogatory

Article 24

In case of urgency, the competent authority of the requesting state may submit a request for detention prior to submitting the letter rogatory.

The letter rogatory shall comprise:

- 1) data necessary to establish proper identity of the person to be requested for extradition;
- 2) factual description and legal qualification of the offence;
- 3) statement by the competent authority of the requesting state regarding the existence of a court decision or an act of indictment referred to in Article 15, item 3) of this Law;
- 4) statement indicating that the letter rogatory shall be submitted.

The request may be submitted to the national judicial authority or the police directly, through the ministry in charge of justice or through the International Criminal Police Organisation (INTERPOL).

Subject to reciprocity, an issued international arrest warrant shall be considered a request.

Actions upon Request

Article 25

The police shall arrest the person the request referred to in Article 24 is related to and bring him/her to the judge without delay.

Once he/she establishes the proper identity of the arrested person, the investigating judge shall inform him/her of the reason for his/her arrest and instruct him/her on the rights referred to in Article 20, paragraph 1, items 1) through 4) of this Law.

Should the person requested for extradition waive his/her right to a defence attorney, or should he/she fail to retain the services of the one within 24 hours as of the time when he/she was advised on it, he/she shall be assigned a defence attorney *ex officio*.

Detention

Article 26

Having interrogated the arrested person, the investigating judge may order detention.

A detention order and the legal advice document on the time limit for the submission of the letter rogatory shall be transmitted, without delay, by the investigating judge to the competent authority of the requesting state in accordance with Article 24, paragraph 3 of this Law, in respect of which he/she shall notify the public prosecutor. If the service was effected directly or through the International Criminal Police Organisation (INTERPOL), it shall be communicated to the ministry in charge of justice as well.

The investigating judge shall revoke a detention order:

- 1) if the competent authority of the requesting state fails to submit the letter rogatory within 18 days from the date of detention;
- 2) if the reasons for ordering detention cease to exist.

At the request of the competent authority of the requesting state, the investigating judge may extend the time limit referred to in item 1, paragraph 2 of this Article to the maximum of 40 days from the date of detention.

Should the letter rogatory not be submitted in the prescribed, i.e. determined time limit, the person concerned may be detained again solely on the grounds of Article 22 of this Law.

b) Proceedings before the Extra-procedural Council

Decisions of the Extra-procedural Council

Article 27

Having examined the documents referred to in Article 23, paragraph 3 of this Law, the Extra-procedural Council shall pass a decision on refusing extradition or on the fulfilment of the preconditions for extradition.

Decision to Refuse Extradition

Article 28

Should the Extra-procedural Council determine that the preconditions referred to in Articles 7 and 16 of this Law are not fulfilled, it shall pass a decision to refuse extradition and transmit it to the immediate higher court without delay.

After hearing the public prosecutor and the defence attorney of the person requested for extradition, the immediate higher court shall ratify, revoke or revise the decision referred to in paragraph 1 of this Article.

A final decision on refusing extradition shall be transmitted to the ministry in charge of justice which shall notify the requesting state thereafter.

Decision on Fulfilment of the Preconditions for Extradition

Article 29

Should the Extra-procedural Council determine that the preconditions referred to in Articles 7 and 16 of this Law are fulfilled, it shall pass a decision thereon.

An appeal against the decision referred to in paragraph 1 of this Article shall be permitted to the immediate higher court within three days from the date of receipt of the decision.

After hearing the public prosecutor, the person requested for extradition and his/her defence attorney, the immediate higher court shall ratify, revoke or revise the decision referred to in paragraph 1 of this Article.

Simplified Extradition Procedure

Article 30

The person requested for extradition may be extradited under a simplified procedure, in accordance with the provisions of this Law.

Should the person referred to in paragraph 1 of this Article consent to be extradited under a simplified procedure, the investigating judge shall present him/her the consequences of such a statement and ask him/her if such consent was expressed voluntarily. The records shall be kept on it.

The consent referred to in paragraph 2 of this Article shall be irrevocable.

The investigating judge shall immediately transmit the records referred to in paragraph 2 of this Article and the documents to the Extra-procedural Council which shall pass a decision referred to in Article 29 of this Law. An appeal shall not be permitted against the decision concerned.

The decision referred to in paragraph 4 of this Article shall, without delay, be transmitted to the ministry in charge of justice which shall proceed in accordance with Articles 31 through 35 of this Law.

c) Proceedings before the Minister

Decisions of the Minister Responsible for Justice

Article 31

A final decision on the fulfilment of the preconditions for extradition shall be transmitted along with the supporting documents to the minister responsible for justice.

The minister responsible for justice shall pass a decision granting or refusing extradition. The decision shall be sent to the competent court, the person requested for extradition, the ministry in charge of interior affairs and the requesting state.

Decision Granting Extradition

Article 32

Within the decision granting extradition, the minister responsible for justice may:

- 1) impose conditions for extradition in terms of Article 14, paragraph 1 of this Law, except if the person requested for extradition has explicitly waived these guarantees;
- 2) specify other conditions for extradition.

Decision Refusing Extradition

Article 33

The minister responsible for justice shall pass the decision refusing extradition:

- 1) provided that the preconditions referred to in Article 7, paragraph 1, items 4) and 5) of this Law are not fulfilled;
- 2) provided that the guarantees of a fair trial were not exercised in the trial process conducted in the absence of the person requested for extradition.

Deferral of Extradition

Article 34

The minister responsible for justice may defer the enforcement of the decision referred to in Article 32 of this Law:

- 1) until the criminal proceedings conducted against the person whose extradition has been granted for some other criminal offence before the national court are finally completed;
- 2) until the person, whose extradition has been granted, has served the prison sentence or some other criminal sanction constituting deprivation of liberty.

Provisional Extradition

Article 35

In the case referred to in Article 34 of this Law, the minister responsible for justice may decide to permit the provisional extradition of the person concerned to the requesting state:

- 1) should it be without prejudice to the criminal proceedings conducted before the national court;

2) should the requesting state provide guarantees that the provisionally extradited person will be detained and that he/she will be returned to the Republic of Serbia upon request of the minister responsible for justice.

Inclusion of the Time Spent in Detention

Article 36

When imposing the prison sentence, the national court shall include the time that the provisionally extradited person spent in prison in the requesting state, i.e. the duration part of the sentence not served shall be reduced by that amount of time.

Taking into account the circumstances referred to in paragraph 1 of this Article, the minister responsible for justice may decide not to request the return of the provisionally extradited person.

Surrender of the Accused or Convicted Person

Article 37

The ministry in charge of internal affairs shall enforce the decision granting extradition.

The ministry referred to in paragraph 1 of this Article shall agree with the competent authority of the requesting state upon the place, time and manner of surrender of the accused or convicted person. The surrender shall be conducted within 30 days from the date of the passing of the decision referred to in Article 32 of this Law.

Should the requesting state, without any justified reason, fail to take over the accused or the convicted person on the agreed upon date, he/she shall be released. Another day for surrender may be specified upon reasoned request of the requesting state.

2. EXTRADITION OF THE ACCUSED OR CONVICTED PERSON TO THE REPUBLIC OF SERBIA

Preconditions for Extradition to the Republic of Serbia

Article 38

If the criminal proceedings are conducted before the national court against the person residing in a foreign state, or the national court has imposed a criminal sanction to the person concerned by means of a final decision, the ministry in charge of justice may submit the letter rogatory upon request of the competent court.

If the person referred to in paragraph 1 of this Article is extradited, the criminal proceedings may be initiated against him/her or the criminal sanction may be enforced against him/her solely for the criminal offence for which extradition is granted, except in case the person concerned has waived such right, and the foreign state has not specified such a precondition.

The letter rogatory shall be accompanied by the documents referred to in Article 15 of this Law.

Conditions for Imposition of a Criminal Sanction

Article 39

If the foreign state has granted extradition under certain conditions relating to the type or the severity of the criminal sanction that may be imposed or executed, the national court shall be bound by these conditions when imposing a criminal sanction, whereas, if the subject is the execution of the already imposed criminal sanction, the national court that adjudicated in the first instance shall revise the decision on the criminal sanction in accordance with the specified conditions provided that they comply with the legislation of the Republic of Serbia in this matter.

If the extradited person is detained in a foreign state due to the criminal offence he/she was extradited for, the time the person concerned spent in detention shall be included in the criminal sanction constituting deprivation of liberty.

Transfer through the Territory of the Republic of Serbia

Article 40

If a foreign state requests extradition from another foreign state, whereas the extradited person is to be transferred through the territory of the Republic of Serbia, the minister responsible for justice may grant to the requesting foreign state the transfer of the person concerned provided that the preconditions referred to in Articles 7 and 16 of this Law are fulfilled.

The letter rogatory shall be accompanied by the documents referred to in Article 15 of this Law.

The costs of transfer through the territory of the Republic of Serbia shall be borne by the requesting state.

III ASSUMPTION AND TRANSFER OF CRIMINAL PROSECUTION

1. ASSUMPTION OF CRIMINAL PROSECUTION FROM A FOREIGN STATE

1) Basic Provisions

Assumption of Criminal Prosecution

Article 41

Under the conditions specified by this Law, the competent public prosecutor may assume criminal prosecution of the suspect or the accused for the criminal offence falling within the jurisdiction of the court of the requesting state.

Criminal Files

Article 42

The letter rogatory shall be accompanied by the original or certified copy of criminal files.

Preconditions for Assumption of Criminal Prosecution

Article 43

Criminal prosecution of a person may be assumed provided that the preconditions referred to in Article 7 of this Law, as well as one of the following preconditions are fulfilled:

- 1) the person concerned has place of residence or domicile in the Republic of Serbia;
- 2) the person concerned is serving the prison sentence or some other criminal sanction constituting deprivation of liberty in the Republic of Serbia.

2) Actions upon Receipt of the Letter Rogatory

Transmission of the Letter Rogatory and Criminal Files to the Public Prosecutor

Article 44

The ministry in charge of justice shall transmit the letter rogatory and criminal files to the public prosecutor in whose territory the person, in respect of whom criminal prosecution is requested to be assumed, has place of residence or domicile, is serving the prison sentence or some other criminal sanction constituting deprivation of liberty, or to the public prosecutor participating in the criminal proceedings conducted against the person concerned for the same or another criminal offence.

The ministry in charge of justice shall also transmit to the competent public prosecutor the opinion on the fulfilment of the preconditions referred to in Article 7, paragraph 1, items 4) and 5) of this Law.

Decision-making on Assumption of Prosecution

Article 45

The competent public prosecutor may decide to assume prosecution provided that the preconditions envisaged in Articles 7 and 43 of this Law are fulfilled.

Notifying the Requesting State and Return of Criminal Files

Article 46

The requesting state shall be notified of the decision rendered by the competent public prosecutor regarding the request for assumption of criminal prosecution, as well as of the final decision rendered in the assumed criminal proceedings.

If the assumption of criminal prosecution is not accepted, a reasoned notification and documents supporting the letter rogatory shall be transmitted to the foreign state concerned.

Rules of Assumed Proceedings

Article 47

The assumed criminal proceedings shall be conducted according to the legislation of the Republic of Serbia.

Notwithstanding the provision of paragraph 1 of this Article, the provisions relating to a trial *in absentia* shall not apply in the assumed criminal proceedings.

A procedural action taken according to the legislation of the requesting state shall be equated with the procedural action taken according to the legislation of the Republic of Serbia, except in case it is contrary to the basic principles of the national legal system and international standards on the protection of human rights and fundamental freedoms.

A criminal sanction imposed in the assumed criminal proceedings may not be more severe than a criminal sanction that may be imposed under the legislation of the requesting state.

Request for Detention prior to the Submission of the Letter Rogatory

Article 48

In case of urgency, the competent authority of the requesting state may submit a request for detention prior to submitting the letter rogatory.

The request shall contain:

- 1) data necessary to establish proper identity of the person for whom the assumption of prosecution shall be requested;
- 2) factual description and legal qualification of the offence;
- 3) statement by the foreign authority regarding the existence of a court decision or an act of indictment referred to in Article 15, item 3) of this Law;
- 4) statement indicating that the letter rogatory shall be submitted.

The request may be transmitted to the competent public prosecutor or the police authority directly, through the ministry in charge of justice or through the International Criminal Police Organisation (INTERPOL).

Subject to reciprocity, an issued international arrest warrant shall be considered a request.

The provisions of Article 25 and Article 26, paragraphs 1 through 4 of this Law shall apply *mutatis mutandis* to the proceeding upon the request.

2. TRANSFER OF CRIMINAL PROSECUTION TO A FOREIGN STATE

Transfer of Criminal Prosecution

Article 49

Criminal prosecution of the suspect or the accused for a criminal offence falling within the jurisdiction of a national court may be transferred to a foreign state under the conditions envisaged in this Law.

Criminal Files

Article 50

The letter rogatory shall be accompanied by the original or certified copy of criminal files.

Preconditions for Transfer of Criminal Prosecution

Article 51

Criminal prosecution of a person may be transferred to the requested state provided that the preconditions laid down in Article 7, paragraph 1, items 4 and 5 of this Law, as well as one of the following preconditions are fulfilled:

- 1) the person concerned has place of residence or domicile in the requested state;
- 2) the person concerned is serving the prison sentence or some other criminal sanction constituting deprivation of liberty in the requested state.

If the party injured by the criminal offence is the Republic of Serbia, its citizen, or a legal entity with headquarters in its territory, during the decision-making process relating to the transfer of criminal prosecution special consideration shall be given to the possibility of securing the property claim and other interests of the injured party.

Decision on Initiation of the Procedure

Article 52

The decision to initiate the procedure for the transfer of criminal prosecution shall be passed by:

- 1) public prosecutor, prior to the initiation of criminal proceedings;
- 2) investigating judge, upon the proposal of the public prosecutor, until the indictment enters into force;
- 3) extra-procedural council, upon the obtained opinion of the public prosecutor, prior to the commencement of the main hearing;
- 4) council, upon the obtained opinion of the public prosecutor, prior to the conclusion of the main hearing.

The accused shall have the right to complain to the immediate higher prosecutor against the decision referred to in paragraph 1, item 1 of this Article within three days.

The accused and the public prosecutor shall have the right to appeal to the immediate higher court directly against the decision referred to in paragraph 1, items 2 through 4 of this Article within three days.

Actions Related to the Letter Rogatory

Article 53

The letter rogatory and criminal files shall be transmitted to the requested state along with a request to promptly give the notice of its decision.

Should the requested state fail to give the notice of its decision within a period of six months from the date of receipt of the letter rogatory and criminal files referred to in paragraph 1 of this Article, the national judicial authority shall proceed with criminal prosecution.

Consequences of Initiating the Procedure for the Transfer of Criminal Prosecution

Article 54

Having passed the decision referred to in Article 52, paragraph 1 of this Law, a national judicial authority shall undertake solely the procedural actions that cannot be delayed.

A national judicial authority shall proceed with criminal prosecution, i.e. with criminal proceedings:

- 1) if the requested state delivers its decision stating that it does not agree to assume the criminal prosecution;
- 2) if the requested state revokes the decision to assume the criminal prosecution;
- 3) if a national judicial authority revises its decision on transfer of criminal prosecution before the requested state delivers its decision on the letter rogatory.

Request for Detention prior to the Submission of the Letter Rogatory

Article 55

In case of urgency, a national judicial authority may submit a request for detention to the requested state prior to the submission of a letter rogatory.

The request shall contain:

- 1) data necessary to establish proper identity of the person for whom the transfer of criminal prosecution shall be requested;
- 2) factual description and legal qualification of the offence;
- 3) statement regarding the existence of a court decision or an act of indictment referred to in Article 15, item 3) of this Law;
- 4) statement indicating that the letter rogatory shall be submitted.

The request may be submitted to the competent authority of the requested state directly, through the ministry in charge of justice or through the International Criminal Police Organisation (INTERPOL).

IV EXECUTION OF A CRIMINAL JUDGEMENT

1. EXECUTION OF A FOREIGN CRIMINAL JUDGEMENT

Subject of Execution

Article 56

Criminal sanction ordered by a final judgement of the competent court of the requesting state may be executed in the Republic of Serbia in accordance with the provisions of this Law.

Documents

Article 57

The letter rogatory shall be accompanied by a certified transcript of the foreign court's criminal judgement.

Conditions for Execution

Article 58

Criminal sanction imposed by the judgement of the requesting state's competent court can be executed if the preconditions envisaged in Article 7 of this Law, and one of the following conditions are fulfilled:

- 1) if the convict is a citizen of the Republic of Serbia;
- 2) if the convict has place of residence or domicile in the Republic of Serbia;
- 3) if the convict is serving the criminal sanction constituting deprivation of liberty as per previously passed judgement.

Court Jurisdiction

Article 59

The court with a territorial jurisdiction according to the latest known place of residence or domicile of the convict in the territory of the Republic of Serbia, or according to the place of execution of the criminal sanction, is competent to conduct the proceedings relating to the letter rogatory.

Request for Detention prior to the Submission of the Letter Rogatory

Article 60

In case of urgency, the competent authority of the requesting state may submit a request for detention prior to submitting the letter rogatory.

The request shall contain:

- 1) data necessary to establish proper identity of the convict;
- 2) factual description and legal qualification of the offence;
- 3) statement regarding the existence of a final convicting judgement;
- 4) statement indicating that the letter rogatory shall be submitted.

The request may be submitted to the national judicial authority or the police authority directly, through the ministry in charge of justice or through the International Criminal Police Organisation (INTERPOL).

Subject to reciprocity, an issued international arrest warrant shall be considered a request.

The provisions of Article 25 and Article 26, paragraphs 1 through 4 of this Law shall apply *mutatis mutandis* to the proceeding upon the request.

Actions upon Receipt of the Letter Rogatory

Article 61

The ministry in charge of justice shall forward to the competent court a letter rogatory and a certified transcript of the foreign criminal judgement, as well as the opinion on the fulfilment of the preconditions referred to in Article 7, paragraph 1, items 4 and 5, and Article 63, item 4 of this Law.

The extra-procedural council of the competent court shall decide upon the letter rogatory at the council's session. The public prosecutor and the defence attorney provided by the court *ex officio* shall be notified of the council's session.

Prior to reaching a decision, the court shall examine the convict about the fulfilment of the conditions for execution.

Upon the termination of the council's session, the court shall reach a decision whether to adopt or refuse the execution of the letter rogatory. During the decision-making process, the court shall be bound to observe the factual description of the criminal offence from the foreign criminal judgement.

Judgement on the Recognition of Foreign Criminal Judgement

Article 62

If the court accepts a letter rogatory, the court shall, by means of a judgement on recognition of a foreign criminal judgement, impose a criminal sanction in accordance with the criminal legislation of the Republic of Serbia. The imposed criminal sanction may not be more severe than the sanction imposed in the foreign criminal judgement.

In the disposition of the judgement referred to in paragraph 1 of this Article, the court shall include the decision to accept a letter rogatory, name of the competent court of the requesting state, the complete text of the foreign criminal judgement disposition, and the court's criminal sanction. In the reasoning of the judgement, the court shall state the reasons that guided it towards the imposed criminal sanction.

An appeal against the judgement referred to in paragraph 1 of this Article may be filed by the public prosecutor, the convict, and the defence attorney.

The execution of the judgement referred to in paragraph 1 of this Article, as well as the decision regarding parole, shall be conducted in accordance with the law of the Republic of Serbia.

Decision to Refuse the Letter Rogatory

Article 63

A decision to refuse the letter rogatory shall be passed:

- 1) if the conditions for the execution of a foreign criminal judgement are not fulfilled;
- 2) if it can be reasonably concluded that the person was convicted because of his/her race, religion, nationality, or political convictions;
- 3) if the judgement was reached in the absence of the convicted person;
- 4) if the conditions for a fair trial were not fulfilled.

Legal Remedies

Article 64

The requesting state's court that passed the criminal judgement to be executed in the Republic of Serbia shall decide on the extraordinary legal remedies filed against the judgement.

Competent authorities of the requesting state and competent authorities of the Republic of Serbia shall decide on the extraordinary commutation of the sentence, on amnesty, and on the pardon of the convicted person.

The ministry in charge of justice shall, without delay, notify the court of the requesting state of the decision of the national court or other state authority that leads to the discontinuation of the execution of a foreign criminal judgement.

2. EXECUTION OF A FOREIGN CRIMINAL JUDGEMENT WITH TRANSFER

Execution with Transfer

Article 65

A citizen of the Republic of Serbia who is serving a criminal sanction constituting deprivation of liberty in a foreign state may be transferred to the Republic of Serbia for the purpose of serving the criminal sanction.

The minister responsible for justice shall grant permission for the transfer of the convict referred to in paragraph 1 of this Article. The permission may not be granted if, at the moment of submission of the request, the convict has less than six months of the criminal sanction constituting deprivation of liberty left to serve.

Principle of Speciality

Article 66

If the convict is transferred to the Republic of Serbia, he/she cannot be detained, criminally prosecuted, or subjected to the execution of a criminal sanction for the criminal offence committed prior to his/her transfer, except for the offence for which he/she was transferred.

The provision of paragraph 1 of this Article shall not be applied:

- 1) if the convict explicitly waives the guarantee referred to in paragraph 1 of this Article;
- 2) if the convict, although given the opportunity, fails to leave the territory of the Republic of Serbia within 45 days from the date of release on parole or completely served sentence, or if he/she returns to the territory of the Republic of Serbia.

Documents

Article 67

The letter rogatory shall be accompanied by a certified transcript of the foreign criminal judgement and the statement of consent to transfer provided by the convict.

Conditions for Transfer

Article 68

Transfer of the convict to the Republic of Serbia for the purpose of execution of a foreign criminal judgement may be conducted provided that the preconditions envisaged in Article 7 of this Law, and one of the following conditions, are fulfilled:

- 1) the execution of the criminal sanction in the Republic of Serbia shall improve the chances for social rehabilitation of the convict;
- 2) the convict consents to a transfer.

Procedure

Article 69

The provisions of Article 61, paragraphs 1, 2 and 4, and Articles 62 through 64 of this Law shall apply *mutatis mutandis* to the procedure of the execution of a foreign criminal judgement with transfer.

The judgement disposition allowing the execution of a foreign criminal judgement with transfer shall contain a decision providing permission to transfer the convict.

3. EXECUTION OF A NATIONAL CRIMINAL JUDGEMENT

Subject of Execution

Article 70

Execution of a criminal sanction imposed by a judgement of the national court may be requested from a foreign state, in accordance with the provisions of this Law.

Documents

Article 71

The letter rogatory shall be accompanied by the original or a certified transcript of the national criminal judgement including the clause regarding its finality and enforceability.

Conditions for the Submission of Request

Article 72

A national court may request the execution of a criminal judgement in a foreign state provided that one of the following conditions is fulfilled:

- 1) if the convict is a citizen of a foreign state;
- 2) if the convict has place of residence or domicile in a foreign state;
- 3) if the convict is serving, based on the previously passed judgement, a prison sentence or some other criminal sanction constituting deprivation of liberty in a foreign state.

Decision on Transfer of the Execution of a National Criminal Judgement

Article 73

A decision to initiate the procedure for the execution of a national criminal judgement in a foreign state shall be passed by the extra-procedural council of the court that passed a first instance judgement, upon obtaining the opinion of the public prosecutor.

Request for Detention prior to the Submission of the Letter Rogatory

Article 74

In case of urgency, a national court may submit a request for detention to the requested state prior to submitting the letter rogatory.

The request shall contain:

- 1) data necessary to establish proper identity of the convict;
- 2) factual description and legal qualification of the offence;
- 3) statement regarding the existence of a court decision or an act of indictment referred to in Article 15, item 3) of this Law;
- 4) statement indicating that the letter rogatory shall be submitted.

The request may be submitted to the competent authority of the requested state directly, through the ministry in charge of justice or through the International Criminal Police Organisation (INTERPOL).

Actions Related to the Letter Rogatory

Article 75

The letter rogatory and supporting documents shall be transmitted to the requested state along with a request to promptly give the notice of its decision.

If the convicted person is at large, a foreign state may be requested to deprive the person concerned of liberty.

Consequences of Acceptance of Execution of a National Criminal Judgement

Article 76

If the requested state accepts the execution of a national criminal judgement, the execution of the criminal sanction in the Republic of Serbia shall be terminated.

If the requested state does not accept the execution of a national criminal judgment or the convict avoids the execution of a criminal sanction in the requested state, the competent court in the Republic of Serbia shall proceed with the execution of judgement.

The ministry in charge of justice shall notify the foreign authority of any and all court decisions or decisions of other state authorities that may influence the execution of the national criminal judgement.

4. EXECUTION OF A NATIONAL CRIMINAL JUDGEMENT WITH TRANSFER

Subject of Execution

Article 77

The convict who is serving the criminal sanction constituting deprivation of liberty in the Republic of Serbia may be transferred to the country of his/her citizenship, i.e. to the country of his/her place of residence or domicile for the purpose of serving the criminal sanction in accordance with the provisions of this Law.

Notification of the Possibility of Execution of the Judgement with Transfer

Article 78

The court that passed the first instance judgement, or the correctional institution in which the convict is serving the criminal sanction constituting deprivation of liberty, shall inform the convict of the possibility of execution of a national criminal judgement with transfer.

Request for Transfer

Article 79

The convict may submit a request for transfer to the correctional institution or the court referred to in Article 78 of this Law.

The request referred to in paragraph 1 of this Article may be submitted by the convict's country of citizenship, or his/her country of residence or domicile, if the convict consents to it.

Decision-making on the Request for Transfer

Article 80

Having obtained the opinion of the public prosecutor, the extra-procedural council of the court that passed the first instance judgement shall decide upon the request for transfer.

The court shall refuse the request for transfer by means of a decision if the convicted person has, at the moment of submission of the request, less than six months of the criminal sanction constituting deprivation of liberty left to serve.

If the court fails to pass a decision referred to in paragraph 2 of this Article, it shall either accept or refuse the request for transfer by means of a decision. An appeal may be filed against the decision.

Actions Related to the Decision to Accept the Request for Transfer

Article 81

The final decision to accept the request for transfer, the national criminal judgement, the text of the corresponding provision of the Criminal Code, the convict's request for transfer, and the report of the correctional institution on the duration of time the convict spent serving the criminal sanction constituting deprivation of liberty shall be transmitted to the ministry in charge of justice in order to forward the said documents to the foreign authority.

Execution of the Decision to Transfer a Convict

Article 82

On the basis of the final decision of the foreign authority to accept the transfer of the convict, the ministry in charge of justice shall issue an order to the correctional institution, referred to in Article 78 of this Law, to hand the convict over to the police that shall escort the convict to a foreign country.

The order referred to in paragraph 1 of this Article shall be accompanied by a decision to accept the request for transfer.

V OTHER FORMS OF MUTUAL LEGAL ASSISTANCE

1. BASIC PROVISIONS

Subject of Other Forms of Mutual Legal Assistance

Article 83

Other forms of mutual legal assistance encompass:

1) conduct of procedural actions, such as issuance of summons and delivery of writs, interrogation of the accused, examination of witnesses and experts, crime scene investigation, search of premises and persons, temporary seizure of objects;

2) implementation of measures, such as surveillance and tapping of telephone and other conversations or communication, as well as photographing or videotaping of persons, controlled delivery, provision of simulated business services, conclusion of simulated legal business, engagement of under-cover investigators, computer search and data processing;

3) exchange of information, and delivery of writs and cases related to the criminal proceedings in the requesting state, delivery of data without the letter rogatory; use of audio and video-conference calls, forming of joint investigation teams;

4) temporary surrender of the person deprived of liberty for the purpose of being examined by the requesting state's competent authority.

Conditions

Article 84

Other forms of mutual legal assistance may be provided if the preconditions referred to in Article 7 of this Law are fulfilled, and if:

1) the conditions envisaged under the Criminal Procedure Code are fulfilled;

2) no criminal proceedings are conducted against the same person before the national court for the criminal offence requiring the provision of mutual legal assistance.

Principle of Speciality

Article 85

The person residing in a foreign state may not be deprived of liberty, detained or criminally prosecuted for the previously committed criminal offence while in the territory of the requesting state for the purpose of making statement in the capacity of an injured party, witness, or expert in the proceedings for the criminal offence for which mutual legal assistance has been provided.

The summons shall expressly state that the injured party, witness, or expert has the rights referred to in paragraph 1 of this Article.

Documents

Article 86

The letter rogatory shall be accompanied by the specification of expenses to be paid to a witness or an expert.

Non-application of Coercive Measures

Article 87

A witness or expert who fails to respond to the summons of the requesting state's competent authority shall not be subjected to any sanctions or coercive measures, even though the summons contained such an order.

2. PROVISION OF OTHER FORMS OF MUTUAL LEGAL ASSISTANCE TO A FOREIGN STATE

Transmission of the Letter Rogatory

Article 88

The ministry in charge of justice shall transmit the letter rogatory and its opinion on the fulfilment of the preconditions referred to in Article 7, paragraph 1, items 4) and 5) of this Law to the court in the territory of which an action is to be undertaken.

Decision-making on the Letter Rogatory

Article 89

The court shall reach a decision regarding the provision of other forms of mutual legal assistance taking into account the fulfilment of the preconditions referred to in Articles 7 and 84 of this Law.

Procedural Rules

Article 90

Notwithstanding Article 12 of this Law, at the request of the competent authority of the requesting state, actions regarding other forms of mutual legal assistance shall be conducted in the manner envisaged in the legislation of the requesting state, unless contrary to the basic principles of the legal system of the Republic of Serbia.

Presence of a Foreign Authority

Article 91

Upon the request of the competent authority of the requesting state to be informed about the provision of other forms of mutual legal assistance, the court shall notify the authority of the time and place of the mutual legal assistance act.

If the court assesses that the presence of a representative of the foreign judicial authority at the venue where other forms of mutual legal assistance are being performed can contribute to better clarification of the issue, the court may decide to grant permission for such presence.

Temporary Surrender

Article 92

Upon request of the requesting state, a person detained or serving the criminal sanction constituting deprivation of liberty in the Republic of Serbia may be temporarily surrendered for the purpose of being examined in the capacity of a witness or expert.

Preconditions for Temporary Surrender

Article 93

Temporary surrender of the person referred to in Article 92 of this Law may be permitted provided that the following preconditions are fulfilled:

- 1) if the person concerned consents to being temporarily surrendered;
- 2) if the person's presence at the criminal proceedings pending before a national court is not necessary;
- 3) if the temporary surrender does not lead to a prolonged deprivation of liberty;
- 4) if there are no other important reasons against the temporary surrender.

In cases envisaged in paragraph 1 of this Article, transit through the territory of the Republic of Serbia may be permitted for the purpose of temporary surrender of a person.

Decision-making on the Request for Temporary Surrender

Article 94

The court that passed the first instance judgement may either allow or refuse temporary surrender by means of a decision.

The disposition of the decision allowing temporary surrender shall indicate, in particular:

- 1) a date set for the return of the temporarily surrendered person;

- 2) necessity for the person to remain in custody until his/her return.
The decision refusing temporary surrender must include a rationale.

Appeal

Article 95

The person whose temporary surrender is requested may file an appeal against the decision referred to in Article 94 of this Law within three days from the date of receipt of the decision. The extra-procedural council shall decide on the appeal within 48 hours.

Joint Investigation Teams

Article 96

If the circumstances of the case justify it, joint investigation teams may be established by an agreement made between the minister responsible for justice and the competent authority of a foreign state.

Deferral of the Provision of Legal Assistance

Article 97

The court may defer the provision of other forms of mutual legal assistance if such an action is considered necessary for the unhindered conduct of the criminal proceedings pending before a national judicial authority and relating to the received letter rogatory.

The competent authority of the requesting state shall be notified of the deferral of the provision of other forms of legal assistance, and the said notification shall indicate the reasons for such deferral.

Transmission of Information without the Letter Rogatory

Article 98

Under the condition of reciprocity, national judicial authorities may, without the letter rogatory, transmit the information relating to the criminal offences and their perpetrators to the competent authorities of the foreign state if this is considered to be of use to the criminal proceedings conducted abroad.

Transmission of the information referred to in paragraph 1 of this Article shall be performed only in case it does not hinder the criminal proceedings conducted in the Republic of Serbia.

National judicial authorities may request from the competent authority of the requesting state that received the information referred to in paragraph 1 of this Article to notify the national judicial authorities of the activities undertaken and decisions reached.

Expenses

Article 99

Notwithstanding the provision of Article 11 of this Law, the requesting state may be asked to compensate the expenses incurred with regard to a person's expert witnessing and temporary surrender.

3. REQUEST FOR OTHER FORMS OF MUTUAL LEGAL ASSISTANCE FROM A FOREIGN STATE

Delivery to National Citizens Residing Abroad

Article 100

Writs shall be delivered to national citizens residing abroad in accordance with Article 6 of this Law, and they may also be delivered through diplomatic or consular representative offices of the Republic of Serbia.

In case of delivery through diplomatic or consular representative offices, the authorised employee of the diplomatic or consular representative office of the Republic of Serbia shall sign the receipt as deliverer - if the writ was delivered at the office, and if the writ was serviced by mail, delivery is confirmed on the return slip.

Delivery to Persons Enjoying Diplomatic Immunity

Article 101

Writs shall be delivered to the persons enjoying diplomatic immunity through diplomatic channels.

VI TRANSITIONAL AND FINAL PROVISIONS

Cessation of Validity of the Law

Article 102

As of the date of entry into force of this Law, the provisions of Chapter XXXII – Procedure for the Provision of Mutual Legal Assistance and Enforcement of International Agreements in Criminal Matters (Articles 530 through 538) and Chapter XXXIII – Procedure for Extradition of the Accused and Convicted Persons (Articles 539 through 555) of the Criminal Procedure Code (Official Gazette of SRY, Nos. 70/01 and 68/02, and Official Gazette of RS, Nos. 58/04, 85/05, 115/05 and 49/07) shall cease to be valid.

Initiated Procedures of Mutual Legal Assistance

Article 103

The proceedings in which the application for mutual legal assistance is submitted until the date of entry into force of this Law shall be conducted in accordance with the provisions of

Chapter XXXII – Procedure for the Provision of Mutual Legal Assistance and Enforcement of International Agreements in Criminal Matters (Articles 530 through 538) and Chapter XXXIII – Procedure for Extradition of the Accused and Convicted Persons (Articles 539 through 555) of the Criminal Procedure Code (Official Gazette of SRY, Nos. 70/01 and 68/02, and Official Gazette of RS, Nos. 58/04, 85/05, 115/05 and 49/07).

Entry into Force

Article 104

This Law shall enter into force on the eighth day following the date of its publishing in the Official Gazette of the Republic of Serbia.