

Criminal Procedure Code

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PART ONE

GENERAL RULES

(...)

Chapter eight - THE VICTIM

Section I: General provisions

Individual who has the capacity of victim

Article 74

(1) The person who has suffered material or immaterial damages from the criminal offence shall be a victim.

(2) After the death of such persons, this right shall pass on to their heirs.

(3) The accused party shall not exercise the rights of a victim within one and the same proceedings.

(...)

Section II: Interrogation

(...)

Interrogation of children and young persons as witnesses

Article 140

(1) Children shall be interrogated as witnesses in the presence of a pedagogue or psychologist, and where necessary, also in the presence of their parent or guardian.

(2) Young persons shall be interrogated as witnesses in the presence of the persons under paragraph 1, if the respective body finds this necessary.

(3) With authorisation of the body conducting the interrogation, the persons under paragraph (1) may put questions to the witness.

(4) The body conducting the interrogation shall explain to the witness who is a child the necessity of giving true testimony, without warning him/her about any responsibility.

(...)

Chapter seventeen: INVESTIGATION

Section I: Institution of pre-trial proceedings and conduct of the investigation

Conditions for the institution of pre-trial proceedings

Article 207

(1) Pre-trial proceedings shall be instituted where there is a statutory occasion and sufficient information about the perpetration of a crime.

(2) In the hypotheses set out in the Special Part of the Criminal Code , publicly actionable proceedings shall be instituted following complaint of the victim addressed to the prosecution office and these shall not be susceptible of termination on grounds of Article 24, para 1, item 9.

(3) The complaint shall be required to contain information about the author and to be signed by him/her.

(4) No state fees shall be due at the moment the complaint is filed.

Statutory occasions

Article 208

The following shall be considered statutory occasions for the commencement of investigation:

1. a notice sent to the pre-trial bodies of the perpetration of a criminal offence;
2. information about a perpetrated criminal offence, distributed by the mass media;
3. appearance of the perpetrator in person before the pre-trial bodies with a confession about a perpetrated crime;
4. direct discovery by pre-trial bodies of signs of a perpetrated crime.

Notice of a perpetrated crime

Article 209

(1) The notice of a perpetrated crime must contain data about the person who is the author thereof. Anonymous notices shall not be statutory occasions for the commencement of investigation.

(2) Notices may be oral or written. Written notices may be legal occasions for the commencement of investigation only where signed. Oral notices shall be put down in a record to be signed by the individual making the statement and the body taking it.

Appearance of the perpetrator in person

Article 210

Where the perpetrator appears in person pre-trial bodies shall establish the identity of the person and shall draw up a record with detailed statement of the confession. The record shall be signed by the appearing person and the body before which confession was made.

Sufficient data for the institution of pre-trial proceedings

Article 211

(1) Sufficient data for institution of pre-trial proceedings shall be considered to be at hand, where a reasonable assumption can be made that a crime has been committed.

(2) No data shall be necessary, from which inferences can be made about the persons who have perpetrated a crime, or about the applicable criminal law in order to institute pre-trial proceedings.

Institution of pre-trial proceedings

Article 212

(1) Pre-trial proceedings shall be instituted by a decree of the prosecutor.

(2) Pre-trial proceedings shall be considered instituted upon drafting the act for the first investigative action, when observation of the crime scene and related searches, seizures and interrogation of eye witnesses are conducted, provided their immediate performance is the only possible way to collect and preserve evidence.

(3) The investigative body that has performed such action under para 2 shall immediately notify the prosecutor, and in any event shall do so no later than 24 hours thereof.

Refusal of the prosecutor to institute pre-trial proceedings

Article 213

(1) The prosecutor may refuse to institute pre-trial proceedings, of which the victim or his/her heirs, the prejudiced legal person and the person who has given a notice, shall be notified.

(2) Of his/her own motion or following appeal of the persons under para 1 a prosecutor with a higher-standing prosecution office may repeal the decree under para 1 and order the institution of pre-trial proceedings and the commencement of investigation.

Content of the decree for institution of pre-trial proceedings

Article 214

(1) The following shall be indicated in the decree for institution of pre-trial proceedings: date and place of its issuance; the issuing body; statutory occasion and data on the basis of which pre-trial proceedings are instituted, and the investigative body, which has drafted the decree.

(2) Where pre-trial proceedings are instituted in pursuance of the procedure under Article 212, para 2, in addition to the circumstances under Article 129, the record for the first investigative action shall also specify the statutory occasion and the data indicating that a criminal offence has been perpetrated.

Action in presence of an unknown perpetrator

Article 215

(1) Where the perpetrator of a criminal offence is unknown, in addition to the investigative action the prosecutor shall assign the respective Ministry of Interior bodies with establishing the identity of and tracing down the perpetrator.

(2) In cases under paragraph 1, where the respective bodies of the Ministry of Interior consider they have collected sufficient data incriminating a certain individual in the perpetration of a crime, they shall deliver the materials collected to the investigative body and shall immediately notify the prosecutor.

Separation of the case

Article 216

(1) Where evidence is collected in the case of the involvement of more individuals, the prosecutor may take the materials concerning non-identified and non-located individuals in a separate case.

(2) Where evidence is collected in the case of several criminal offences committed by one and the same individual, the prosecutor may take materials concerning some of the offences in a separate case.

Joinder of cases

Article 217

(1) Where two or more cases for different criminal offences against different individuals have a certain relationship to each other, they shall be joined if so required for the proper discovery of the objective truth.

(2) The prosecutor may join two or more cases concerning different offences against one and the same accused party.

Assistance from other bodies

Article 218

(1) Where necessary, the investigative body may request from another investigative body to perform separate investigative actions.

(2) Should the investigative body so request, the bodies of the Ministry of Interior shall be obligated to assist him/her in carrying out separate investigative actions .

Constituting the accused party and presentation of the decree to this effect

Article 219

(1) Where sufficient evidence is collected for the guilt of a certain individual in the perpetration of a publicly actionable criminal offence, and none of the grounds for terminating criminal proceedings are present, the investigative body shall report to the prosecutor and issue a decree to constitute the person as accused party.

(2) The investigative body may also constitute the accused party in this particular capacity upon drafting the act for the first investigative action against him/her, of which it shall report to the prosecutor.

(3) In the decree for constitution of the accused party and the record for actions under para 2 the following shall be indicated:

1. The date and location of issuance;
2. The issuing body;
3. The full name of the individual constituted as accused party, the offence on account of which he/she is constituted and its legal qualification;
4. Evidence on which such constitution is based, provided this will not obstruct the investigation;
5. The remand measure, if one is imposed;
6. The rights of the accused party under Article 55, including his/her right to decline to provide explanation, as well as the right to have authorised or appointed counsel.

(4) The investigative body shall present the decree for constitution to the accused party and his/her defence counsel, allowing them to gain knowledge of its full content and, where needed, giving additional explanations. The investigative body shall serve against a signature a copy of the decree on the accused party.

(5) Where the accused party has not authorised a defence counsel and request to organise his/her defence, the investigative body shall postpone the presentation of the decree for constitution and the interrogation of the accused party for a period of up to 72 hours, issuing summons anew.

(6) If the accused party again appears without defence counsel, the investigative body shall present him/her with the decree for constitution, appointing him a defence counsel in cases under Article 94, para 1.

(7) The investigative body may not take investigative action involving the accused party until he/she has acquitted himself of the duties under paras 1 - 6.

Action in respect to an individual enjoying immunity

Article 220

(1) No individual enjoying immunity shall be constituted as accused party. Criminal prosecution in respect of such individual on account of the same crime shall be instituted once he/she is divested of immunity, if no other bars thereto are present.

(2) Where the accused party acquires immunity, criminal proceedings shall be stayed, measures for procedural coercion taken against him/her being withdrawn. In this case proceedings may resume in respect to the other accused parties, provided this will not hinder the discovery of the objective truth.

Interrogation of the accused party

Article 221

Following presentation of the decree for constitution of the accused party, the pre-trial body shall immediately proceed with the interrogation of the accused party in pursuance of Article 138.

Interrogation of the accused party before a judge

Article 222

(1) Should the pre-trial body deem it appropriate, the interrogation shall be made before a judge from the respective first instance court or the court in the area of which the action is taken with the participation of a defence counsel, if such exists. In this case the file is not presented to the judge.

(2) For the interrogation under paragraph (1) the respective body shall secure the appearance of the accused party and his defence counsel.

(3) Insofar as no special rules have been introduced, interrogation under paragraph 1 shall be conducted following the rules of judicial trial.

Interrogation of the witness before a judge

Article 223

(1) If there is a risk for the witness failing to appear before court because of serious illness, prolonged absence from the country or for other reasons that make impossible his/her appearance at a court hearing, as well as where it is necessary to affix the testimony of a witness that is of exceptional importance for the discovery of the objective truth, the interrogation shall be carried out before a judge from the respective first instance court or the court in the area of which the action is taken. In this case the file is not presented to the judge.

(2) The pre-trial body shall secure the appearance of the witness and shall make it possible for the accused party and his defence counsel, if such exists, to participate in the interrogation.

(3) Insofar as no special rules have been introduced, interrogation under para 1 shall be conducted following the rules of judicial trial.

(4) The accused party or his/her defence counsel may request for the pre-trial body the interrogation of a witness under para 1. Refusal shall be put down in a record signed by the respective body, the accused party and his/her defence counsel.

Presence during the performance of investigative actions

Article 224

Where the provisions of this Code do not provide for attendance of the accused party, of his/her defence counsel or of the victim and his/her counsel in conducting the respective investigative actions, the pre-trial body may allow them to attend, provided this shall not obstruct the investigation.

New constitution of the accused party

Article 225

Where during investigation the presence of grounds is found require the application of a law concerning a criminal offence punishable by a more serious sanction or the factual circumstances have considerably changed, or new offences need to be introduced or new individuals need to be constituted, the investigative body shall report this to the prosecutor and perform a new constitution of the accused party.

Action before presentation of the investigation

Article 226

(1) Where the investigative body finds that all investigative action necessary to discover the objective truth has been taken, he/she shall report the case to the prosecutor.

(2) The prosecutor shall verify whether the investigation has been lawful, objective, comprehensive and complete.

(3) Where the prosecutor finds that during investigation a serious violation of procedural rules has been made or that evidence required for the discovery of the objective truth has not been collected, or that a new constitution is required, he/she shall alone take the required action or instruct the investigative body to perform it.

Presentation of the investigation

Article 227

(1) Following completion of action under Article 226, the investigative body shall present the investigation.

(2) The accused party and his/her defence counsel shall be summonsed to be presented with the investigation.

(3) The victim and his/her counsel, provided they have submitted a request to this effect, shall be summonsed for the presentation of the investigation.

(4) Where the accused party or his/her defence counsel do not appear, the investigative body shall schedule a new presentation of the investigation within 72 hours, if the participation of a defence counsel is mandatory, or if the accused has not been able to authorise such counsel in good time but wishes to organise his/her defence.

(5) Where the accused party again appears without authorised counsel, the investigative body shall present him/her with the investigation, appointing a defence counsel in cases under Article 94, para 1.

(6) Failure of the victim or his/her counsel to appear where validly summonsed, shall not be grounds for scheduling a new presentation. The investigation shall not be presented to the victim where he/she has not been located at the address for the service of process indicated by him/her in this country.

(7) Prior to presenting the investigation, the investigative body shall explain to the attending persons their rights.

(8) The investigation shall be presented, the investigative body placing at the disposal of the attending persons all relevant materials for examination.

(9) The prosecutor may present the investigation where he/she has alone taken the actions under Article 226, para 3. In this case the prosecutor shall not draft a final decree.

Getting familiarized with the materials

Article 228

(1) The investigative body shall set a term for examination of the materials, depending upon the factual and legal complexity of the case, the volume of the file and other circumstances which may be of significance for the duration of the examination.

(2) Where some of the attending persons are not in a position to examine the materials, the investigative body shall be obligated to explain the latter to them and, if necessary, to read the materials out to them.

(3) Where a person refuses to examine the materials, the refusal and the reasons therefore shall be noted down in the record for presentation of the investigation.

Requests, remarks and objections

Article 229

(1) After examination of the materials, the respective persons may make requests, remarks and objections.

(2) The written requests, remarks and objections shall be enclosed with the case file, and the verbal ones shall be entered into the record for presentation of the investigation.

(3) The supervising prosecutor shall rule on requests, remarks and objections.

Additional investigative actions

Article 230

(1) The persons who have requested additional investigative actions, may attend during the performance of the latter.

(2) Upon completion of the additional actions, the investigative body shall present the investigation for a second time.

Final decree of the investigative body

Article 231

Upon final completion of the investigation, the investigative body shall draw up a final decree.

Accusatory decree

Article 232

(1) The investigative body shall draft an accusatory decree where he/she finds that the perpetrated criminal offence and the involvement of the accused party have been substantiated beyond doubt.

(2) The following shall be indicated in brief in the factual part of the accusatory decree: the crime committed by the accused; the time, place and manner of its perpetration; the victim and the amount of damages; data about the personality of the accused party, the evidence on the basis of which the specified circumstances are established, and the legal qualification of the act.

(3) The following shall be indicated in the concluding part of the accusatory decree: the prosecutor office to which the case file shall be forwarded; the date and place of drawing up the decree and the name and position of its author.

(4) The following shall be enclosed with the accusatory decree: a list of persons to be summonsed to the court hearing; information about the remand measures taken, indicating the date of detention of the accused, if the measure is remand in custody or house arrest; information about the documents and the material pieces of evidence; information about the expenses incurred and information about the measures taken to secure the claims; as well as information about placement of children in cases under Article 63, paragraph (8).

Decree for termination or suspension of the criminal proceedings

Article 233

(1) Should he/she find that there are legal grounds therefore, the investigative body shall draw up a decree for termination or suspension of the criminal proceedings.

(2) The following shall be indicated in the decree under paragraph (1): the offence on account of which the individual has been constituted as accused party; the grounds on which criminal proceedings should be terminated or suspended; the date and place of drawing up the final decree and the name and position of its author.

Time limit for carrying out the investigation

Time limit for measures of procedural coercion

Article 234

(1) Investigation shall be completed and the file shall be sent to the prosecutor within two months at the latest, as from the date of institution thereof.

(2) The prosecutor may set a shorter limit. Should this time prove insufficient the prosecutor may extend it to the expiry of the term under paragraph 1.

(3) Upon request of the prosecutor, where the case presents factual or legal complexity, a prosecutor with a higher-standing prosecution office may extent the time limit under para 1 by no more than four months. In exceptional cases this time limit may be extended by the Prosecutor-General.

(4) A request for extension of the time limit shall be sent no later than fifteen days prior to expiry of the periods under paras 1 and 2. It shall state the reasons making it impossible to complete the investigation in due course, the investigative actions taken, as well as any forthcoming actions due.

(5) The prosecutor with a higher-standing prosecution office or the Prosecutor-General may set a shorter time limit than requested. In this case the extension shall occur in pursuance of paras 2 and 3.

(6) The prosecutor who extends the time limit for completion of the investigation shall also make a pronouncement on the measures of procedural coercion.

(7) Investigative actions taken outside the time limits under paras 1 - 3 shall not generate legal effect and the evidence collected may not be used before court for the issuance of a sentence.

(8) Measures of procedural coercion taken in respect to the accused party shall be revoked by the prosecutor after expiry of more than two years of constitution of the accused party, in cases of serious crimes and of more than one year - in all other cases.

(9) If the prosecutor fails to discharge his/her duty under para 8, the measures of procedural coercion shall be revoked at the request of the accused party or his/her defence counsel by the respective first-instance court.

(10) The court shall issue as a single-judge panel a ruling which shall be subject to appeal within three days before the intermediate appellate review instance court.

(11) The intermediate appellate review instance court shall make pronouncement in a three-judge panel sitting in camera by a decree which shall be final.

Forwarding the file to the prosecutor

Article 235

After drawing up the final decree, the investigative body shall immediately forward the file to the prosecutor.

Section II: Records for investigative actions.

Sound and video recordings.

Presentation and service of records for investigative actions

Article 236

(1) The pre-trial body shall present the record for the investigative action to the persons who have participated in their performance, in order to enable them to get acquainted with it, or shall read it out to them upon their request.

(2) The pre-trial body shall explain to each person the right to request corrections or changes and additions to the record. The requests made shall be entered into the record.

(3) Where some of the persons who have taken part in the investigative actions refuse or are not in a position to sign the record, the pre-trial body shall make a note thereof and shall also state the reasons.

(4) A copy of the record for search, personal search, seizure and personal examination shall be served on the person with respect to whom such investigative actions have been conducted.

Record of interrogation

Article 237

(1) The record of interrogation shall comprise the following data about the person interrogated: full name, date and place of birth, citizenship, nationality, education, family status, occupation, place of work and position, residence, record of previous convictions and other data, which may be of significance for the case. In the cases of Article 123, paragraph (2), item 2, the identity data shall not be entered in the record.

(2) Explanations and testimonies shall be recorded in the first person, verbatim, if possible.

(3) Where necessary, the questions and the answers shall be recorded separately.

(4) The interrogated persons shall certify with their signatures that the explanations or depositions have been correctly recorded. If the record is written on several pages, the interrogated persons shall sign on each page.

(5) The interrogated persons may, if they wish so, set forth in their own hand the explanations or testimonies given orally. In this case the pre-trial body may ask additional questions.

Sound recording

Article 238

(1) At the request of the person interrogated or at the initiative of the pre-trial body, a sound recording may be made of which the person interrogated shall be informed prior to the beginning of interrogation.

(2) The sound recording shall contain the information indicated in Article 129, paragraph (1), and Article 237.

(3) The sound recording of part of the interrogation or the repetition, especially for the sound recording, of part of the interrogation, shall not be allowed.

(4) Upon completion of the interrogation the sound recording shall be played in full to the person interrogated. Additional explanations and testimonies shall also be reflected in the sound recording.

(5) The sound recording shall end with a declaration by the person interrogated that it reflects correctly the explanations and testimonies given thereby.

Interrogation record in the case of sound recording

Article 239

(1) The investigative body shall draw up interrogation record also where a sound recording has been made.

(2) The record shall comprise: the major circumstances of the interrogation; the decision to make a sound recording; the notification of the person interrogated of the sound recording; the remarks made by the person interrogated in relation to the sound recording; the reproduction of the sound recording before the person interrogated and the statement of the pre-trial body and of the person interrogated as to the correctness of the sound recording.

(3) The sound recording shall be enclosed with the record, after it has been sealed with a note indicating: the body conducting the interrogation; the case, the name of the person interrogated and the date of interrogation. The note shall be signed by the pre-trial body and the interrogated person.

(4) Breaking the seal of the sound recording for the needs of investigation shall be allowed only by authorisation of the prosecutor and in the presence of the person interrogated. While playing the sound recording, the person interrogated shall also be present.

(5) After hearing, the sound recording shall be sealed again, pursuant to paragraph (3).

Video recording

Article 240

The provisions of Articles 237 -239 shall apply to making video recording, mutatis mutandis.

Sound and video recording in other investigative actions

Article 241

Sound and video recordings may also be made in other investigative actions, with due application of the provisions of Articles 237 - 239.

**Chapter eighteen - ACTION TAKEN BY THE PROSECUTOR FOLLOWING COMPLETION
OF THE INVESTIGATION**

Powers of the prosecutor

Article 242

(1) After receiving the case, the prosecutor shall terminate, suspend criminal proceedings, make a proposal for exemption from criminal liability with the imposition of an administrative sanction or a proposal for agreement to dispose of the case, or press new charges with an indictment, provided grounds to this effect are present.

(2) Where upon presentation of the investigation the investigative body has made considerable procedural violations, the prosecutor shall instruct him/her to remove these or shall remove them him/herself.

(3) The prosecutor shall exercise his/her powers under paras 1 2 within the shortest possible term, but not later than one month after receipt of the case file.

Termination of criminal proceedings by the prosecutor

Article 243

(1) The prosecutor shall terminate the criminal proceedings:

1. in cases under Article 24, paragraph (1);
2. should the prosecutor find that the involvement of the accused party in the offence has not been proved;

(2) In the decree, the prosecutor shall also decide on issues pertaining to material evidence and revoke the measures of procedural coercion, as well as the measure securing the civil claim, where grounds for the imposition of the latter no longer exist.

(3) Copies of the decree for termination of the criminal proceedings shall be sent to the accused party and to the victim or his/her heirs, or to the prejudiced legal person who may, within seven days from the receipt thereof, appeal it before the respective first instance court.

(4) The court shall hear the case in a panel of one judge sitting in camera no later than 7 days following submission of the case-file, concluding on the substantiation and legality of the decree for termination of the criminal.

(5) By virtue of its ruling the court may:

1. Confirm the decree of the prosecutor,
2. Modify the decree of the prosecutor in relation to the grounds for termination of the criminal proceedings and the modalities of disposal of material evidence,
3. Revoke the decree of the prosecutor and remit the case to him/her accompanied with mandatory guidance on the application of the law.

(6) The decree under paragraph (5) may be objected by the prosecutor and appealed by the accused party, his/her defence counsel and the victim or his/her heirs, or by the prejudiced legal person, within seven days from notification before the respective intermediate appellate review instance court.

(7) The intermediate appellate review instance court shall make pronouncement in a three-judge panel sitting in camera, by a ruling which shall be final.

(8) No decree for the partial termination of criminal proceedings shall be drafted in the event of new constitution of the same individual in relation to the same criminal act.

(9) Where grounds under paragraph 1 were absent, the decree for termination of the criminal proceedings, which has not been appealed by the accused party, the victim or his/her heirs, or by the prejudiced legal person, may ex officio be revoked by a prosecutor with a higher-standing prosecution office.

Suspension of the criminal proceedings by the prosecutor

Article 244

(1) The prosecutor shall suspend criminal proceedings:

1. in cases under Articles 25 and 26;
2. where the perpetrator of the crime has not been discovered;
3. in the case of prolonged absence of an only eye witness from the country, where the interrogation of that witness is of exclusive interest to the discovery of the objective truth, unless such witness may be interrogated by letter rogatory, or through a phone or video conference.

(2) Where in cases under para 1, item 2 an accused party has been constituted, criminal proceedings in respect thereto shall be terminated.

(3) In the event of suspension of the criminal proceedings, the prosecutor shall send copies of his/her decree to the accused party and to the victim and his/her heirs.

(4) After reopening suspended criminal proceedings, the investigation shall be carried out within the terms under Article 234.

(5) A decree under para 1 may be appealed by the accused party, the victim or his/her heirs before the respective first-instance court within seven days of receipt of a copy thereof. The court shall rule in a single-judge panel, in camera, no later than seven days of submission of the case-file in court, by a ruling, which shall be final.

(6) Subsequent appeal against the suspension of criminal proceedings may be submitted no earlier than six months after the ruling paragraph (5).

(7) In cases under para 1, item 3 criminal proceedings shall be suspended for a period not longer than one year.

Actions in suspended criminal proceedings

Article 245

(1) Where criminal proceedings have been suspended because the perpetrator had not been discovered, the prosecutor shall remit the case to the investigative body in order to continue searching for him/her. The investigative body shall notify the prosecutor of the outcome of search operations and hand over any collected material.

(2) Suspended criminal proceedings shall be reopened by the prosecutor, after elimination of the reasons for suspension, or provided there is need for further investigative actions.

(3) After reopening the suspended proceedings, the investigation shall be carried out within the terms under Article 234. These terms shall not take into account the time during which criminal proceedings were suspended.

Indictment

Article 246

(1) The prosecutor shall draw up an indictment where he/she is persuaded that the necessary evidence for the discovery of the objective truth and for pressing charges before court were collected, that there are no grounds for terminating or suspending criminal proceedings, that no considerable violation of procedural rules has been allowed that is susceptible of elimination.

(2) The following shall be indicated in the factual part of the indictment: the crime committed by the accused party; the time, place and manner of its perpetration; the victim and the amount of the damages; full data about the personality of the accused party, whether the conditions for application of Article 53 of the Criminal Code are at hand; the circumstances which aggravate

or attenuate the liability of the accused party; the evidential materials from which the indicated circumstances have been established.

(3) The following shall be indicated in the concluding part of the indictment: information about the identity of the accused party; the legal qualification of the act; whether there are grounds for application of Article 53 of the Criminal Code ; whether there are grounds for the transfer of criminal proceedings and under which international treaty; the date and place of drawing up the indictment and the name and position of its author.

(4) The following shall be enclosed with the indictment: a list of persons to be summonsed at the court hearing; information about the remand measure taken, indicating the date of detention of the accused party if the measure is remand in custody or house arrest; information about the documents and the pieces of material evidence; information about the expenses incurred; information about the security measures taken; as well as information on the placement of children in cases under Article 63, paragraph (8).

(...)

Chapter thirty-six: PROCEEDINGS IN RELATION TO INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

Section III: International Legal Assistance in Criminal Cases

Grounds and contents of international legal assistance

Article 471

(1) International legal assistance in criminal matters shall be rendered to another state under the provisions of an international treaty executed to this effect, to which the Republic of Bulgaria is a party, or based on the principle of reciprocity. International legal assistance in criminal cases shall also be made available to international courts whose jurisdiction has been recognised by the Republic of Bulgaria.

(2) International legal assistance shall comprise the following:

1. Service of process;
2. Acts of investigation;
3. Collection of evidence;
4. Provision of information;
5. Other forms of legal assistance, where they have been provided for in an international agreement to which the Republic of Bulgaria is a party or have been imposed on the basis of reciprocity.

Refusal of international legal assistance

Article 472

International legal assistance may be refused if the implementation of the request could threaten the sovereignty, the national security, the public order and other interests, protected by law.

Appearance of witnesses and experts before a foreign national court

Article 473

(1) Appearance of witnesses and experts before foreign national judicial bodies shall be allowed only if assurance is provided, that the individuals summonsed, regardless of their citizenship, shall not incur criminal liability for acts committed prior to summonsing. In the event they refuse to appear, no coercive measures may be taken in respect thereof.

(2) The surrender of individuals remanded in custody to the purpose of being interrogated as witnesses or experts shall be only admitted under exceptional circumstances at the discretion of a panel of the respective district court, based on papers submitted by the other country, or an international court, provided the individual consents to being surrendered, and his/her stay in another state does not extend beyond the term of his/her remand in custody.

Interrogation of individuals through a video or phone conference

Article 474

(1) The judicial body of another state may conduct the interrogation, through a video or phone conference, of an individual who appears as a witness or expert in the criminal proceedings and is in the Republic of Bulgaria, where so envisaged in an international agreement to which the Republic of Bulgaria is a party. An interrogation through a video conference involving the accused party or a suspect may only be conducted upon their consent and once the participating Bulgarian judicial authorities and the judicial authorities of the other state agree on the manner in which the video conference will be conducted. An interrogation through a video or phone conference may only be conducted where this does not stand in contradiction to fundamental principles of Bulgarian law.

(2) The request for interrogation filed by a judicial body of the other state should indicate:

1. The reason why the appearance in person of the individual is undesirable or impossible;
2. The name of the judicial body of the other state;
3. The data of individuals who shall conduct the interrogation;
4. The consent of the individual who shall be interrogated as a witness or expert through a phone conference;
5. Consent of the accused party who will take part in an interrogation hearing through a video conference.

(3) Bulgarian competent authorities in the field of criminal proceedings shall implement requests for interrogation through a video or phone conferences. A request for interrogation through a video or phone conference shall be implemented for the needs of pre-trial proceedings by the National Investigation Service. For the need of judicial proceedings, a request for interrogation through a phone conference shall be implemented by a court of equal standing at the place of residence of the individual, and for interrogation through a video conference - by the Appellate Court at the place of residence of the individual. The competent Bulgarian authority may require the requesting party to ensure technical facilities for interrogation.

(4) The interrogation shall be directly conducted by the judicial authority of the requesting state or under its direction, in compliance with the legislation thereof.

(5) Prior to the interrogation the competent Bulgarian authority shall ascertain the identity of the person who needs to be interrogated. Following the interrogation a record shall be drafted, which shall indicate:

1. The date and location thereof;
2. The data of the interrogated individual and his or her consent, if it is required;
3. The data of individuals who took part therein on the Bulgarian side;
4. The implementation of other conditions accepted by the Bulgarian party.

(6) An individual who is abroad may be interrogated by a competent Bulgarian authority or under its direction through a video or phone conference where the legislation of said other state so admits. The interrogation shall be conducted in compliance with Bulgarian legislation and the provisions of international agreements to which the Republic of Bulgaria is a party, wherein the above means of interrogation have been regulated.

(7) The interrogation through a video or phone conference under para 6 shall be carried out in respect of pre-trial proceedings by the National Investigation Service, whereas in respect of trial proceedings - by the court.

(8) The provisions of paras 1 - 5 shall apply mutatis mutandis to the interrogation of individuals under para 6.

Procedure for submission of a request to another country or international court

Article 475

(1) A letter rogatory for international legal assistance shall contain data about: the body filing the letter; the subject and the reasoning of the letter; full name and citizenship of the individual to whom the letter refers; name and address of the individual on whom papers are to be served; and, where necessary - the indictment and a brief description of the relevant facts.

(2) A letter rogatory for international legal assistance shall be forwarded to the Ministry of Justice, unless another procedure is provided by international treaty to which the Republic of Bulgaria is a party.

Execution of request by another country or international court

Article 476

(1) Request for international legal assistance shall be executed pursuant to the procedure provided by Bulgaria law or pursuant to a procedure provided by an international agreement to which the Republic of Bulgaria is a part. A request may also be implemented pursuant to a procedure provided for in the law of the other country or the statute of the international court, should that be requested and if it is not contradictory to the Bulgarian law. The other country or international court shall be notified of the time and place of execution of the request, should that be requested.

(2) Request for legal assistance and all other communications from the competent authorities of another state which are sent and received by fax or e-mail shall be admitted and implemented by the competent Bulgarian authorities pursuant to the same procedure as those sent by ordinary mail. The Bulgarian authorities shall be able to request the certification of authenticity of the materials sent, as well as to obtain originals by express mail.

(3) The Supreme Prosecution Office of Cassation shall set up, together with other states, joint investigation teams, in which Bulgarian prosecutors and investigative bodies will take part. An agreement with the competent authorities of the participant states shall be entered in respect of the activities, duration and composition of a joint investigation team. The joint investigation team shall comply with provisions of international agreements, the stipulations of the above agreement and Bulgarian legislation while being on the territory of the Republic of Bulgaria.

(4) The Supreme Prosecution Office of Cassation shall file requests with other states for investigation through an under-cover agent, controlled deliveries and cross-border observations and it shall rule on such requests by other states.

(5) In presence of mutuality a foreign authority carrying out investigation through an agent under cover on the territory of the Republic of Bulgaria shall be able to collect evidence in accordance with its national legislation.

(6) In urgent cases involving the crossing of the state border for the purposes of cross-border observations on the territory of the Republic of Bulgaria the Supreme Prosecution Office of Cassation shall be immediately notified. It shall make a decision to proceed with or terminate cross-border observations pursuant to the terms and conditions of the Special Intelligence Instruments Act .

(7) The implementation of requests for controlled delivery or cross-border observations filed by other states shall be carried out by the competent investigation authority. It shall be able to request assistance from police, customs and other administrative bodies.

Costs for execution of request

Article 477

The costs for execution of request shall be distributed between the countries in compliance with international treaties to which the Republic of Bulgaria is a party, or on the basis of the principle of reciprocity.

(...)